

No. 12527

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United States  
Court of Appeals

For the Ninth Circuit.

*See vol 96 37*

INTERNATIONAL LONGSHOREMEN'S AND  
WAREHOUSEMEN'S UNION and INTER-  
NATIONAL LONGSHOREMEN'S AND  
WAREHOUSEMEN'S UNION, LOCAL 16,

Appellants,

vs.

JUNEAU SPRUCE CORPORATION, a Corpo-  
ration,

Appellee.

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Transcript of Record

In Two Volumes

Volume I  
(Pages 1 to 552)

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**FILED**

Appeal from the District Court  
for the Territory of Alaska  
Division Number One.

JUL 10 1950

**PAUL P. O'BRIEN,**  
CLERK



No. 12527

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United States  
Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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For Appellees.

In the District Court for the Territory of Alaska  
Division Number One at Juneau

No. 5996-A

JUNEAU SPRUCE CORPORATION, a Corporation,

Plaintiff,

vs.

INTERNATIONAL LONGSHOREMEN'S AND  
WAREHOUSEMEN'S UNION, an Unincorporated Association, and INTERNATIONAL  
LONGSHOREMEN'S AND WAREHOUSE-  
MEN'S UNION, LOCAL 16, an Unincorporated Association,

Defendants.

## SECOND AMENDED COMPLAINT

Comes now plaintiff and for its cause of action against defendants alleges as follows:

### I.

This action arises under the laws of the United States regulating commerce, more particularly under Section 303 of the Labor-Management Relations Act, 1947 (Act of June 23, 1947, c. 120 § 303, 61 Stat. 158, 29 U. S. C. A. (pocket supp.) § 187).

### II.

Plaintiff is a corporation organized under the laws of the Territory of Alaska, with its principal place of business at Juneau, Alaska. Plaintiff has

paid to the Territory of Alaska its annual corporation taxes last due and has filed its annual report for the calendar year 1947, as required by the laws of said Territory.

### III.

Defendant, International Longshoremen's and Warehousemen's Union, is and at all times herein mentioned was a labor organization, engaged in directing, representing, and acting for its members and local unions in the Territory of Alaska, in the Province of British Columbia, Dominion of Canada, and in various ports of the West Coast of the United States, to wit, in ports in the States of Washington, Oregon and California. [1\*]

### IV.

Defendant, International Longshoremen's and Warehousemen's Union, Local 16 (also sometimes designated as Local 1-16), hereinafter designated "Local 16" is and at all times herein mentioned was a labor organization chartered by and affiliated with the International Longshoremen's and Warehousemen's Union immediately hereinabove described in Paragraph III hereof, with its headquarters in the City of Juneau, Alaska, and is engaged in representing its members in and about said city.

### V.

At all times herein mentioned plaintiff conducted and now conducts a lumber manufacturing opera-

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\* Page numbering appearing at bottom of page of original Transcript of Record.

tion which at all times material hereto operated as follows: Plaintiff maintains a logging operation at Edna Bay, Territory of Alaska, and transports its logs from said place to its mill at Juneau in said Territory, at which mill said logs are manufactured into lumber and lumber products. Plaintiff maintains retail lumber yards in the cities of Juneau, Anchorage and Fairbanks, in the Territory of Alaska, at which yards it sells a portion of the lumber manufactured at its mill, as well as hardware, sash, doors, shingles, and other items commonly sold at retail lumber yards, all of which items except its lumber are purchased in the United States and transported to said yards. Plaintiff sells the majority of the lumber and lumber products produced at its mill in Juneau to customers in many states of the United States, shipping said lumber and lumber products so sold to said customers by water to West Coast ports in the United States and Canada and from said ports by railroad to its customers located as aforesaid. That by virtue of its location plaintiff is unable to receive or ship products in the operation of its business as herein described except by water, in whole or in part. That the loading and unloading of its barges at its mill is an essential part of the manufacturing and sale of plaintiff's lumber and lumber products.

## VI.

That a labor organization, to wit, International Woodworkers of America, Local M-271, hereinafter

designated "Local M-271," has at all times herein mentioned represented and now represents all of plaintiff's employees at its [2] mill and retail yard in Juneau, except plaintiff's clerical and supervisory employees, and plaintiff has at all times herein mentioned recognized and bargained with said Local M-271 as such representative; that there is now and has at all times herein mentioned been in effect a collective bargaining agreement between plaintiff and Local M-271 wherein plaintiff recognizes the right of Local M-271 to bargain for plaintiff's employees at its Juneau operations as described herein.

## VII.

From about April 10, 1948, until the present time defendants have unlawfully engaged in, and induced and encouraged plaintiff's employees at Juneau, Alaska, and employees of other employers, to engage in a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities of plaintiff, or to perform any services for plaintiff.

## VIII.

An object of defendants in their activities described in paragraph VII above has been, and is, to force and require plaintiff; to assign the work of loading its barges with its lumber to members of Local 16 rather than to other persons, including members of Local M-271, to whom said work has

heretofore been assigned. Neither of said defendants has been certified by the National Labor Relations Board as the bargaining representative for employees performing such work.

### IX.

That as a direct and proximate result of the picketing and coercive statements of defendants, and of the communication of the fact of said picketing to other labor organizations in ports of the United States and Canada, and elsewhere, all of which activities have been since April 10, 1948, and now are continuously carried on, plaintiff's employees at its Juneau mill refused to work for a long period of time, to wit, from April 10, 1948, to approximately July 19, 1948, and plaintiff was forced to close said mill as a result thereof. That sufficient employees returned to work on or about July 19, 1948, to enable plaintiff to operate said mill for a period of time, to wit, until October 11, [3] 1948, but at greatly increased cost to plaintiff. That because of the activities of defendants aforesaid, plaintiff has been unable to ship its lumber from its mill to customers, and as a result thereof plaintiff again was forced to close its mill on October 11, 1948. That because of the activities of defendants aforesaid plaintiff has been and is unable to transport materials to its retail yards in Alaska as described in Paragraph V hereof. That as a direct and proximate result of the unlawful activities of defendants, as hereinabove described, plain-



tiff has been damaged in the amount of One Million Twenty-Five Thousand (\$1,025,000.00) Dollars to date of filing this second amended complaint.

X.

It has been necessary for plaintiff to employ attorneys for the institution, maintenance and prosecution of this action, and will incur fees for such services in a minimum reasonable amount of Ten Thousand (\$10,000.00) Dollars.

Wherefore, plaintiff demands judgment against defendants and each of them in the sum of One Million Twenty-Five Thousand (\$1,025,000.00) Dollars and the additional sum of Ten Thousand (\$10,000.00) Dollars as attorneys' fees, and for its costs and disbursements herein.

N. C. BANFIELD,  
Attorney for Plaintiff.

Copy received 4/27/49.

[Endorsed]: Filed April 27, 1949. [4]

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[Title of District Court and Cause.]

SPECIAL APPEARANCE BY MOTION  
TO QUASH SERVICE OF SUMMONS

Comes now International Longshoremen's and Warehousemen's Union, and appearing specially for the purposes herein set forth and for none other, moves that the service of summons on movant herein be quashed; and for grounds states movant is an unincorporated labor organization with offices at

San Francisco, California; that the purported service of summons on movant was made on Verne Albright at Cordova, Alaska; that the said Verne Albright was not at the said time of purported service of summons an officer or agent of movant, or an officer or agent of movant upon whom service of summons of any court of the United States could lawfully be made on movant; all of which appears from the files and records of the Court and from the affidavit attached hereto, and made a part hereof by reference, and from the affidavit of Germain Buleke heretofore filed herein.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,  
HENRY RODEN,  
WILLIAM L. PAUL, JR.

Attorneys for International Longshoremen's and  
Warehousemen's Union, Movant.

By /s/ WILLIAM L. PAUL, JR.,  
Of Counsel for Movant.

Copy received. [5]

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[Title of District Court and Cause.]

### AFFIDAVIT OF VERNE ALBRIGHT

United States of America  
Territory of Alaska—ss.

Verne Albright, being first duly sworn, on oath deposes and says:

That he is the identical person on whom the sum-



mons is alleged to have been served in this cause. Affiant states that on or about November 10, 1947, he was appointed an International Representative of International Longshoremen's and Warehousemen's Union (hereinafter referred to as "ILWU") by the International Organizing Committee of said union. Affiant states that while he was never given any written instructions concerning his duties as an International Representative of the ILWU, he had had previous discussions with Germain Bulcke, Second Vice-President of ILWU, in connection with this matter, and that Mr. Bulcke had orally informed him that his principal duty as International Representative would be to serve as a liaison between ILWU locals in Alaska and the office of ILWU in San Francisco, and that his other duties would be to report to the ILWU office in San Francisco on the observance of ILWU's constitution and by-laws by the locals in Alaska and on the general conditions of labor relations as such reports were specifically requested by ILWU, or at semi-monthly intervals; to organize new ILWU locals in Alaska; to assist in labor relations and negotiations between ILWU locals in Alaska and employers, but only at the request of said locals and in their interest and on their behalf; to provide service to ILWU locals in Alaska in the sense of advising them on labor relations matters and other problems which they might have.

Affiant further states that he has not had, nor does he now have, any general power to bind ILWU

in any particular, nor did he have at any of the times herein mentioned, power or authority, generally to bind or commit or obligate ILWU in any way. Similarly, save and except that at the specific [6] Instance and request of locals in Alaska, he had no power to bind or commit the locals. .

Each local is autonomous within ILWU and this autonomy is complete with regard to the commencement or cessation of labor disputes or the cooperation or lack of it with other labor organizations.

Affiant states that his power to bind ILWU is limited to matters specifically and specially referred to him by ILWU and only if, as and when such power to bind is specifically and specially conferred upon him by ILWU.

Affiant states that at no time has he specifically or specially or in any other way been empowered to accept the service of process for and on behalf.

Affiant further states with regard to the labor dispute currently existing between the Juneau Spruce Corporation and defendant Local Union 16 of ILWU as follows:

1. This is a dispute between the company and Local Union 16. It is not a dispute between the company and the ILWU.

2. Affiant's activities in connection with this dispute insofar as they relate to ILWU have been as follows:

- (a) Making general reports on the dispute to ILWU approximately semi-monthly; this is part of affiant's general duty to ILWU informed on the

progress of all such matters in which his locals are interested.

(b) Rendering to Local 16 his usual advisory services as requested from time to time by Local 16. Such advice consisted principally of advice on questions of whether the action or contemplated action of Local 16 is or is not within the power of Local 16, and whether it is or is not advisable to take from time to time.

(c) Affiant has made no request either on his own initiative or on behalf of Local 16 for any assistance, cooperation, approval, disapproval, permission or ratification of any kind of action taken by Local 16 in said labor dispute to ILWU or to any other locals of ILWU.

(d) There has been no assistance, cooperation, approval, disapproval, permission or ratification by ILWU of any of the action taken by Local 16.

(e) The only instructions affiant has received from ILWU in connection with this matter is that he is to make himself available to Local 16 for the purpose of exploring with it and its officers any possibilities or settlement of the controversy between Local 16 and the employer. Affiant is to make only recommendations in this connection; the ultimate authority to settle a controversy on any terms is vested in Local 16.

(3) No money or other thing of value has been paid or obligated to be paid by Local 16 to ILWU on account of said dispute directly or indirectly. Nor has any money or thing of value been paid or

obligated to be paid by ILWU to Local 16 on account of said dispute.

4. ILWU has not instigated, maintained or advised the commencement or continuance of said dispute directly or indirectly, specifically or generally; ILWU is not now, nor has it even been since long prior to the commencement of said dispute, engaged in the business of instigating, maintaining or advising the commencement or continuance of any labor disputes including said dispute between any Alaskan employers and any local unions in Alaska, including Local 16; no specific benefit is recognized, known to exist, or expected to be obtained by ILWU from said dispute, if said Local 16 wins or compromises said dispute; and no specific injury is recognized known to exist, or expected to be incurred by ILWU from said dispute if Local 16 loses or compromises said dispute; the only money or thing of value that goes from Local 16 to ILWU is the payment of the regular per capita tax from the Local to ILWU and that is not affected by this dispute.

5. ILWU is an unincorporated labor organization and has no officers or agents in Alaska to represent it. It maintains no office at any point or points in Alaska. It has no agent for the service of process in Alaska now or at any of the times herein mentioned.

6. The system of organization of ILWU herein

described has been the only system maintained since about 1937.

7. The governing body of ILWU is its membership; that its membership functions through annual conventions; that in between conventions there are meetings of its Executive Board, and in between meetings of the Executive Board, it is governed by its four titled officers, to wit, a president, a first vice-president, a second vice-president, and a secretary-treasurer; that all of the titled officers of ILWU are residents of the State of California, and transact their business in the State of California; that the executive Board transacts its business in the State of California; that the members of the Executive Board are residents of the States of Oregon, Washington and California, and transact the business delegated to them by the said Board in the states of their residence; that no member of the Executive Board is a resident or inhabitant of Alaska, nor has there been a member of the Executive Board in Alaska since prior to the commencement of this suit.

8. That ILWU during all the times herein mentioned, maintains, recognizes, cooperates and participates in and customarily ratifies no other activities than those above set forth except purely educational and publicity activities of a general nature on labor relations matters.

9. That affiant is not now, nor has he ever been, authorized generally or specially to accept service



of summons on behalf of ILWU in this or any other cause, or to appear for or represent ILWU in any court.

10. Affiant makes this affidavit for the purpose of supporting the special appearance of ILWU.

/s/ VERNE ALBRIGHT.

Subscribed and sworn to before me this December 27, 1948.

[Seal]      /s/ ORPHA C. MILLIGAN,  
Notary Public for Alaska.

My Commission expires June 3, 1952.

Copy received. [9]

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[Title of District Court and Cause.]

### MINUTE ORDER OF MARCH 11, 1949

At this time the Court filed its Opinion in this case in which it was decreed that this Court had jurisdiction of the International Union, which in effect overruled defendants' demurrer on both grounds. Later, upon the calling up for argument, Motion to Strike in cause No. 6046-A, it was stipulated between counsel that the effect of the decision above mentioned would also have the effect of overruling the defendants' two other motions in this case. The Motion to Quash was made and overruled. [10]

[Title of District Court and Cause.]

### DEMURRERS

Come now defendants and demur to plaintiff's complaint, and for grounds state:

1. This Court has no jurisdiction of the person of the defendants.

2. This Court has no jurisdiction of the subject of the action.

HENRY RODEN and  
WILLIAM L. PAUL, JR.,  
Attorneys for Defendants.

By WILLIAM L. PAUL, JR.,  
Of Counsel.

Receipt of Copy acknowledged.

[Endorsed]: Filed November 20, 1948. [11]

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[Title of District Court and Cause.]

### MOTION FOR LEAVE TO WITHDRAW DEMURRER

Comes now International Longshoremen's and Warehousemen's Union by its Attorneys, and moves the court for leave to withdraw insofar as it is concerned, the demurrers which appear to have been filed in its behalf heretofore; and for grounds states that said demurrers were filed by William L. Paul, Jr., and Henry Roden at the instance and request

of Verne Albright; that the said Verne Albright; that the said Verne Albright was without authority to employ any attorneys, including William L. Paul, Jr., and Henry Roden, for movant in this cause, or to authorize attorneys in any manner to proceed; and said demurrers are not the pleading of movant; all of which appears by affidavits attached hereto and made a part hereof by reference.

GLADSTEIN, RESNER,  
ANDERSEN and SAWYER,  
WILLIAM L. PAUL, JR. and  
HENRY RODEN,

Attorneys for International Longshoremen's and  
Warehousemen's Union, Movant.

By /s/ WILLIAM L. PAUL, JR.,  
Of Counsel for Movant. [12]

---

[Title of District Court and Cause.]

### AFFIDAVIT OF GERMAIN BULCKE

State of California,  
City and County of San Francisco—ss.

Germain Buleke, being first duly sworn, deposes and says:

That I am now and at all times herein mentioned have been a title officer, to wit, Second Vice-President of the International Longshoremen's and Warehousemen's Union (hereinafter referred to as



“ILWU”); that I have been informed that Verne Albright has been served with a summons in the above-entitled matter; that Verne Albright is not now and never has been authorized to accept service of summons or any other process for and on behalf of ILWU, or to appear for or represent ILWU in any court; that Verne Albright was appointed an “International Representative” of ILWU in November of 1947; that prior to his appointment, while I was engaged in a tour of Alaska, I discussed [13] with him the possibility of such appointment and informed him that if the officers of ILWU decided to appoint him to that post, his principal task would be that of communicating conditions in Alaska which affect ILWU locals to the San Francisco offices of ILWU, and to give advice to ILWU locals in Alaska as requested by those locals and only when requested by those locals, in connection with labor relations matters in which they might be involved. Actually, Albright’s principal function in Alaska is to assist and advise the local unions there on their own behalf and in their own interest, and to inform the ILWU of what he is doing. This function would normally be performed by an officer or officers of the local unions in Alaska but since their financial condition is such as not to permit them to maintain such a person in full time employment, the ILWU officers simply chose one of the Alaska members and undertook to provide him with a salary. Apart from receiving his salary from the ILWU and from making

periodic reports to the ILWU, Albright has no other connection with the ILWU. His chief duties are to assist the locals as and when requested by them.

He certainly had never been authorized to, nor does he have the power to, bind the ILWU in any respect save and except as that power may from time to time be specially conferred upon him; no power, either specially or generally, was conferred upon him with respect to representing, binding or committing the ILWU in connection with this lawsuit, and no power has ever been conferred upon him generally or specifically, with respect to the service of process on him as a representative of the ILWU.

GERMAIN BULCKE.

Subscribed and sworn to before me this 16th day of December, 1948.

[Seal]

ALICE C. MORSE,  
Notary Public in and for the City and County of  
San Francisco, State of California.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 3, 1949. [14]

[Title of District Court and Cause.]

MOTION FOR CERTIFICATE

Comes now International Longshoremen's and Warehousemen's Union, one of the defendants above named, by its attorneys undersigned, and appearing specially for the purposes of this motion and none other, moves the court for an order that its certificate issue to the Attorney General of the United States under and pursuant to Title 28, Sec. 2403, United States Code; and for grounds states that it appears from the special appearance of this defendant heretofore filed herein to quash service of summons that a question of the constitutionality of Sec. 301 (e) of the Labor Management Relations Act, 1947, will be raised by movant, in that said section seeks to create agency relationships and liabilities therefor irrespective of whether such agency relationships exist in fact, contrary to and in violation of the "due process" clause (Amendment V) of the U. S. Constitution.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER.  
HENRY RODEN and  
WILLIAM L. PAUL JR.,  
Attorneys for Movant.

By /s/ WILLIAM L. PAUL, JR.,  
Of Counsel.

Copy received January 3, 1949.

[Endorsed]: Filed Jan. 3, 1949. [15]

[Title of District Court and Cause.]

MOTION FOR CERTIFICATE BY LOCAL 16

Comes now Local No. 1-16 of the defendants above-named, and moves the court that its certificate issue to the Attorney General of the United States under and pursuant to Title 28, Sec. 2403, U. S. Code (1948) that the constitutionality of the Labor Management Relations Act, 1947, Section 303 (b) has been drawn into question by this defendant, in that the reference made in said section 303 (b) purports to confer jurisdiction on "any court" irrespective of whether any court has power to confer or allow the right to trial by jury or adequate notice and hearing, contrary to and in violation of the "due process" clause (Amendment V) and the "equal protection" clause (Amendment XIV, Sec. 1) of the U. S. Constitution.

HENRY RODEN and  
WILLIAM L. PAUL, JR.,  
Attorneys for Movant.

By WILLIAM L. PAUL, JR.,  
Of Counsel.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 11, 1949. [16]

[Title of District Court and Cause.]

## ORDER OVERRULING DEMURRER AND DENYING MOTIONS

The Court having called on for hearing the following described Demurrer and Motions and the respective parties having been heard in open court with respect thereto, and the Court having filed its Opinion herein holding that the Demurrer must be overruled, both with respect to its jurisdiction over the person of the defendants and its jurisdiction over the subject of this action; and the Court being fully advised in the premises with respect to:

1. Both Defendants Demurrer to Plaintiff's Complaint on the grounds that this court has no jurisdiction over the person of the defendants and that this court has no jurisdiction over the subject of the action.

2. The Motion of International Longshoremen's & Warehousemen's Union, Local No. 1-16, requesting that a Certificate issue to the Attorney General of the United States under the provisions of Title 28, Section 2403, U. S. Code, 1948, because a constitutional question has arisen under Sec. 303(b) of the Labor Management Relations Act.

3. The Motion of International Longshoremen's & Warehousemen's Union for an Order certifying to the Attorney General of the United States pursuant to Title 28 Sec. 2403 U. S. Code, that a constitutional question has arisen under Sec. 301(e) of the Labor Management Relations Act. [17]

4. The Motion of International Longshoremen's & Warehousemen's Union to quash service of the summons upon said defendant.

5. The Motion of International Longshoremen's & Warehousemen's Union for leave to withdraw its Demurrer with respect to this Court's jurisdiction over the person and subject of said defendant.

The court having heard the argument and considered the briefs filed by the parties, orders as follows:

It Is Hereby Ordered that the above-described Demurrer is hereby overruled on both grounds stated therein, and said Motions are each hereby denied. The Defendants are allowed ten (10) days from March 11, 1949, within which to further plead without prejudice to their right to apply for a further extension of time within which to plead if good cause is shown that they are unable to further plead within such time.

Done in open court this 18 day of March, 1949.

GEORGE W. FOLTA,  
Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 18, 1949. [18]



[Title of District Court and Cause.]

## ANSWER & AFFIRMATIVE DEFENSE

Comes now defendant International Longshoremen's and Warehousemen's Union, Local 16, hereinafter called "Local 16," and answering the complaint, admits, denies and alleges as follows:

1. Answering paragraph one of said complaint, Local 16 denies each and every allegation therein contained and the whole thereof.

2. Answering paragraph two of said complaint, Local 16 admits the material allegations thereof.

3. Answering paragraph three of said complaint, Local 16 denies each and every allegation therein contained and the whole thereof.

4. Answering paragraph four of said complaint, Local 16, admits the material allegations thereof.

5. Answering paragraph five of said complaint, Local 16 admits the material allegations thereof, except that Local 16 denies "that the loading and unloading of its (plaintiff's) barges at its mill is an essential part of the manufacturing \* \* \* of plaintiff's lumber and lumber products."

6. Answering paragraph six of said complaint, Local 16 denies each and every allegation therein contained and the whole thereof.

7. Answering paragraph seven of said com-

plaint, Local 16 denies each and every allegation therein contained and the whole thereof.

8. Answering paragraph eight of said complaint, Local 16 denies each and every allegation therein contained and the whole thereof. [19]

9. Answering paragraph nine of said complaint, Local 16 denies each and every allegation therein contained; and particularly Local 16 denies that plaintiff will be damaged in the sum of \$193,000, or in any other sum or at all.

10. Answering paragraph ten of the complaint, Local 16 denies each and every allegation therein contained and the whole thereof.

### Affirmative Defense

As a further and affirmative defense, defendant Local 16 alleges as follows:

11. Juneau Spruce Corporation, hereinafter called "the Company," is a business enterprise incorporated and existing by virtue of the laws of the Territory of Alaska, and has its principal place of business in Juneau, Alaska.

12. The Company has been and is engaged principally in felling timber and manufacturing lumber products from its logs, in which latter operation it operates a mill in Juneau, Alaska. The value of the products manufactured by the Company annually is in excess of \$1,000,000.00, which products are sold and shipped by the Company from Juneau to cus-



tomers in the Territory of Alaska in places other than Juneau, and to customers in various States of the United States, being transported to the latter customers by seagoing, waterborne carriers and by railway carriers operating through Canada and through various States of the United States.

13. The Company is engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Labor Management Relations Act of 1948, hereinafter called the "Act."

14. Local 16 is a labor organization within the meaning of Section 2, subsection (5) of the Act, functioning as such in the Territory of Alaska since prior to 1937.

15. Local 16, ever since 1937, has been and now is a party to a collective bargaining agreement with all employers engaged in business along the waterfront in Juneau, Alaska, duly organized and all commonly known as the "Waterfront Employers Association of Juneau, Alaska," which collective bargaining agreement included the following provisions: That the said employers agreed to hire for longshore [20] work, members of Local 16; and Local 16 agreed to assist said employers in calling its members to work; and Local 16 further agreed to use reasonable efforts to provide as many persons for longshore work as said employers called, first exhausting the aforesaid preference, and then providing "extra" men; and if the aforesaid preference and extra men were not available, the said employers were free to hire whomsoever they chose for

said work. That in actual practice said employers hired very few persons not members of Local 16 or extra men provided by Local 16, Local 16 being able to provide the number of persons requested by the employer. Each extra man is granted a permit by Local 16 to work at longshoring, which grant is without restriction, except the payment of a nominal fee. That under and by virtue of said agreement, members of Local 16, since the Company commenced operations, have been employees of the Company.

16. Ever since the commencement of its operations, Juneau Spruce Corporation has been and now is a party to the collective bargaining contract described in paragraph 15 hereof.

17. In the course of the Company's said operations and beginning about May 1, 1947, the Company used one or more seagoing barges, steamships, pot scows, inland water barges, tug boats, cannery tenders and other types of floating equipment to transport its lumber by water from its mill in Juneau to places of delivery in Canada, Alaska, and the Continental United States, and in ocean transportation, and assigned certain of its employees, who worked usually in a different appropriate collective bargaining unit, to wit, in its mill and mill yard, to load its lumber aboard said barges at its said mill yard and dock, and refused to assign its employees, to wit, members of Local 16, to load said barges.

18. On or about October 23, 1947, with full knowledge, acquiescence and consent of IWA, Local M-271, Local 16, then and subsequently, asserted to the Company that it would picket the operations of the Company at its mill in Juneau because the Company was violating the contract described in paragraph 15 hereof, unless the Company agreed to abide by said contract and reduce the terms thereof to writing. [21]

19. On April 10, 1948, at the hour of approximately 6:00 a.m., Local 16 engaged and continued in peacefully picketing the operations of the Company at its mill in Juneau throughout 1948, to induce compliance with its assertions set forth in paragraphs 15 and 17 hereof.

Wherefore, Local 16 prays that the Complaint be dismissed and plaintiff go without day.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER and

HENRY RODEN and

WILLIAM L. PAUL, JR.,

Attorneys for ILWU Local 16.

By WILLIAM L. PAUL, JR.,  
Of Counsel.

United States of America,  
Territory of Alaska—ss.

Joe Guy of Juneau, Alaska, being first duly sworn, on oath deposes and says: That I am agent

for Local 16 and am duly authorized by said Local to make verifications of this nature on its behalf and now so act; that I have read the foregoing Answer and Affirmative Defense, know the contents thereof, and the same is true.

JOE GUY.

Subscribed and sworn to before me this 24th day of March, 1949.

[Seal]

WILLIAM L. PAUL, JR.,  
Notary Public for Alaska.

My Commission expires Jan. 19, 1952.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 24, 1949. [22]

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[Title of District Court and Cause.]

### MINUTE ORDER OF APRIL 27, 1949

This case came on before the court for trial by jury. Upon roll call the entire jury was found to be present. Plaintiff was represented by N. C. Banfield and Manley D. Strayer. Defendants were represented by Henry Roden, William L. Paul and George Anderson, the latter having been admitted as associate counsel in this case only. Plaintiff moved for permission to file his second amended complaint; defendants objected but the objection was overruled and the second amended complaint

was filed. It was thereupon stipulated that the answers on file will apply as to the amended complaint, and thereupon plaintiff filed an amended reply, after which the Court proceeded to empanel a jury to try the case. At 5:00 p.m., a jury not having been secured, court was adjourned until tomorrow morning at 10:00 o'clock.

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[Title of District Court and Cause.]

### ANSWER

Comes now International Longshoremen's and Warehousemen's Union, hereinafter called "ILWU," one of the defendants above named, and answering plaintiff's complaint, admits, denies, and alleges as follows:

1. Answering paragraph one of said complaint, ILWU denies each and every allegation therein contained.

2. Answering paragraph two of the Complaint, ILWU admits the material allegations therein contained.

3. Answering paragraph three of said complaint, ILWU denies each and every allegation therein contained and the whole thereof.

4. Answering paragraph four of said complaint, ILWU denies each and every allegation therein contained except that ILWU admits that Local 16, therein referred to, was and is a labor organization.



5. Answering paragraph five of said complaint, ILWU alleges that it does not have knowledge or information sufficient to form a belief as to whether the allegations contained therein are true, and, therefore, denies each and every allegation therein contained.

6. Answering paragraph six of said complaint, ILWU alleges that it does not have knowledge or information sufficient to form a belief as to whether the allegations contained therein are true, and, therefore ILWU denies each and every allegation therein contained.

7. Answering paragraph seven of the complaint, ILWU denies each [24] and every material allegation therein contained and the whole thereof.

8. Answering paragraph eight of said complaint, ILWU denies each and every material allegation therein contained and the whole thereof.

9. Answering paragraph nine of said complaint, ILWU denies each and every material allegation therein contained and the whole thereof; and particularly denies that plaintiff has been damaged in the sum of \$193,000 or in any other or at all, on account of any matter or thing done or left undone by this answering defendant.

10. Answering paragraph ten of said complaint, ILWU denies each and every allegation therein contained and the whole thereof.

Wherefore, the answering defendant prays that

plaintiff recover nothing against it and that it recover its costs and disbursements herein.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER, and  
WILLIAM L. PAUL, JR., and  
HENRY RODEN,  
Attorneys for Defendants.

By WILLIAM L. PAUL, JR.,  
Of Counsel.

United States of America,  
Territory of Alaska—ss.

William L. Paul, Jr., of Juneau, Alaska, being first duly sworn, on oath deposes and says that I am one of the Attorneys for Defendants and am duly authorized by said defendant to make this verification in their behalf; that defendant ILWU is not at place where verification is made; that I have read the foregoing Answer, know the contents thereof and the same is true.

WILLIAM L. PAUL, JR.,  
Affiant.

Subscribed and sworn to before me this 24th day of March, 1949.

[Seal] SUE M. KENNEDY,  
Notary Public for Alaska.

My Commission Expires April 18, 1949.

Receipt of copy acknowledged.

[Endorsed]: Filed March 24, 1949. [25]

[Title of District Court and Cause.]

## REPLY

Comes now the plaintiff and in reply to the affirmative defense of the defendant, International Longshoremen's and Warehousemen's Union Local 16, the plaintiff admits and denies the allegations thereof as follows:

### I.

Plaintiff admits the allegations of paragraph numbered 11 in said defendant's affirmative defense.

### II.

Plaintiff admits the allegations of paragraph numbered 12 of said defendant's affirmative defense.

### III.

Plaintiff admits the allegation contained in paragraph numbered 13 of said defendant's affirmative defense.

### IV.

Plaintiff admits the allegations of paragraph numbered 14 in said defendant's affirmative defense.

### V.

Plaintiff has insufficient knowledge regarding the statements made in paragraph numbered 15 of said defendant's affirmative defense to form a belief regarding the same and therefore denies each and every allegation of said paragraph except that plaintiff specifically denies that Local 16 has been



or now is a party to a collective bargaining agreement with all employers engaged in business along the waterfront in Juneau, Alaska, and further denies that [26] members of Local 16, since the commencement of its operations, have been employees of the company by virtue of said agreement.

VI.

Plaintiff denies the allegations contained in paragraph numbered 16 of said defendant's affirmative defense.

VII.

Plaintiff admits the allegations of paragraph numbered 17 of said defendant's affirmative defense except that plaintiff denies that the employees assigned to load lumber aboard said barges usually worked in a different appropriate collective bargaining unit than the one to which the members of Local 16 belonged.

VIII.

Plaintiff admits the allegations of paragraph numbered 18 of said defendant's affirmative defense except that plaintiff denies that the assertion to the company alleged in said paragraph was made with the acquiescence and consent of I.W.A. Local M-271.

IX.

Plaintiff admits the allegations contained in paragraph numbered 19 of said defendant's affirmative defense.

Wherefore, plaintiff prays that said affirmative defense be dismissed and held for naught, and that plaintiff be given relief as prayed for in plaintiff's complaint.

FAULKNER, BANFIELD &  
BOOCHEVER,

By N. C. BANFIELD,  
Of Counsel for Plaintiff.

[Endorsed]: Filed April 1, 1949. [27]

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[Title of District Court and Cause.]

DEFENDANTS' REQUESTED  
INSTRUCTIONS

Respectfully submitted,

WILLIAM L. PAUL, JR.,  
Of Attorneys for Defendants.

No. 1

You are instructed that it is the public policy of the United States that—

Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its

relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of the Labor Management Relations Act of 1947, oftentimes called the "Taft-Hartley Act," in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and prescribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

Approved: .....

Refused: .....

Modified: ..... [29]

## No. 2

The Taft-Hartley Act was enacted in the interest of public policy to avoid economic strife and warfare, and so if you find from a consideration of all the evidence in this case that the action of the Juneau Spruce Corporation in refusing to accede to the demand of IWA M-271 to turn over the loading of barges to Local 16 was unreason-

able or unjustifiable, in view of that provision, plaintiff is not entitled to recover any damage it may have sustained on account of such unreasonable or unjustifiable refusal to bargain.

This policy is applicable only to the territorial limits of the United States and not to Canada.

Given: .....

Refused: .....

Modified: .....

### No. 3

You are instructed that while neither IWA M-271 nor Local 16 has been certified as the bargaining agent for the employees or any craft or class of such employees of the plaintiff, nevertheless both unions had the right under the law to bargain with the plaintiff for the members of their respective organizations.

In this connection you are instructed that if the electricians, plumbers, carpenters, or members of any other craft employed by Juneau Spruce Corporation has the right under the Taft-Hartley Act to bargain with it in the interest of its members, and if they offered to do so it becomes the duty of the plaintiff to negotiate with them or any of them.

Given: .....

Refused: .....

Modified: ..... [30]

No. 4

The Court further instructs you that even though there was an agreement entered into on November 3, 1947, between Juneau Spruce Corporation and the IWA M-271, the IWA had the right at any time, as a matter of law, with the approval of Juneau Spruce Corporation, to assign its or any part of the longshore work to Local 16.

Given: .....

Refused: .....

Modified: .....

No. 5

You are further instructed that picketing is a form of free speech guaranteed by the Constitution of the United States. Picketing alone does not of itself give rise to a cause of action for damages. There must be additional evidence showing by a preponderance that such picketing was accompanied by acts of coercion or intimidation by defendants or either of them of plaintiff or plaintiff's employees to the extent that such coercion or intimidation in addition to the picketing caused them to refuse to go through the picket line.

In determining whether a preponderance of the evidence shows coercion or intimidation, you are instructed that the fact that members of IWA M-271 and others went through the picket line from July to October 11, 1948, may be considered in relation to the situation as it existed on April 10, 1948, as well as all other facts and circumstances of the case.

If you find that members of IWA M-271 and other employees of plaintiff voluntarily agreed or decided not to go to work, you cannot hold the defendants or either of them responsible; and you should find your verdict for defendants.

Given: .....

Refused: .....

Modified: .....[31]

### No. 6

In this case evidence has been introduced that Verne Albright, Germain Bulcke and John Barry represented themselves as agents of the defendant International Union. In this connection, you are instructed that the mere statement of a person that he is the agent of another is not sufficient to establish such agency and unless you find from other evidence in this case which shows that the International Union actually and actively engaged in an effort to compel the Juneau Spruce Corporation to assign the loading of its barges to Local 16, the agency has not been established and it will be your duty to return a verdict in favor of the defendant International Union.

Given: .....

Refused: .....

Modified: .....

### No. 7

In this case the plaintiff is suing for \$1,025,000 damages and have introduced evidence in support of their claim. Money damages is something that



the jury should not lightly consider. The law requires that before any damages may be awarded, the amount of said damages must be definitely and precisely shown and proved. It is not sufficient for the plaintiff simply to allege that it has sustained damages and put in some proof to support its claim; and before you can award damages against these defendants or either of them, the exact amount of such damages must be definitely proved. Guesses as to the amount or guesses as to hoped-for profits, unsupported by definite, credible evidence, is not sufficient proof upon which you can award damages in any sum.

Given: .....

Refused: .....

Modified: ..... [32]

#### No. 8

You are instructed that the change of ownership of a manufacturing plant in no way affects a contract existing between the seller and his employees.

“It is the employing industry that is sought to be regulated and brought within the correct and remedial provisions of the Taft-Hartley Act.”

And if you find from a consideration of all the evidence in this case that a contract existed between Local 16 and Juneau Lumber Mills at the time that the latter sold its plant to the Juneau Spruce Corporation under the terms of which contract Local 16 had the exclusive right to do all longshore work needed by Juneau Lumber Mills, it became and was the duty of plaintiff after its purchase

of said plant to continue to observe the provisions of that labor contract for the period of time it had to run or until it was mutually modified or terminated and then to bargain in good faith with Local 16 for a renewal thereof.

The phrase, "bargain in good faith" means what an ordinarily prudent man would do in similar circumstances towards bringing about a meeting of the minds of the parties concerned in the situation, and necessarily includes that each part confront the other openly and honestly and in such manner as to apprise the other fully of its meaning and intentions, and includes the element that neither party shall deliberately bring about an impasse.

National Labor Relations Board vs. Hopps  
Mfg. Co., 170 Fed. (2d) 964.

Given: .....

Refused: .....

Modified: ..... [33]

### No. 9

I further instruct that under section 9 (c) (1) (b) of the Taft-Hartley Act, if two or more individuals or labor organizations present a claim to an employer to be recognized as a bargaining representative for any group of employees, that under such circumstances the employer, facing the claim of two different groups or unions also has the right to petition the National Labor Relations Board to have the question investigated and then an immediate election to determine who shall be

the representative of the group of workers involved.

In view of the foregoing, you may consider the failure of the employer to resort to the National Labor Relations Board as a matter in mitigation of any alleged damages claimed to have been suffered or sustained by the employer, in this instance the Juneau Spruce Corporation.

Given: .....

Refused: .....

Modified: .....

No. 10

I further instruct you that if you find that the employer wilfully failed or refused to petition the National Labor Relations Board alleging that two unions were claiming jurisdiction over certain work, to wit, longshoring, and seeking to have the National Labor Relations Board conduct an investigation and immediate election to determine the proper bargaining unit, then I instruct you that the plaintiff cannot recover for any claimed damage, as its failure to comply with the provisions of the Act mentioned operate as a bar to recovery

Section 9, Labor Management Relations Act,  
1947.

Given: .....

Refused: .....

Modified: ..... [34]

No. 11

Labor contracts may be oral or in writing, or

partly oral and partly in writing. They may be made through formal negotiations between the parties or be adopting the provisions of another contract existing between the same or other parties, or by adopting the customs and practices in a trade or industry which have been acquiesced in over a period of time.

If you find from a consideration of the evidence in this case that an agreement existed between Local 16 and the Juneau Lumber Mills, under which Local 16 performed all longshore work needed by Juneau Lumber Mills and that the plaintiff in this case adopted such agreement and hired members of Local 16 to do its longshore work, it may be fairly concluded that plaintiff adopted the contract formerly existing between Juneau Lumber Mills and Local 16 and it is bound by that adoption, and is required to carry out the terms thereof in good faith.

A labor contract, whether it be in writing or oral, or partly in one and partly in the other, should be construed in the light of all the facts and circumstances affecting the subject matter with which it deals. And you are authorized in arriving at a decision in this case to consider all evidence introduced relating to the manner in which the parties themselves interpreted the provisions of that contract or agreement.

Given: .....

Refused: .....

Modified: ..... [35]

No. 12.

You are instructed that section 201 of the Taft-Hartley Act provides as follows:

That it is the policy of the United States that:

“(a) Sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of the employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

“(b) The settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for settlement of disputes; and

“(c) Certain controversies which arise between parties to collective bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within



such agreement provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.”

### No. 13

Section 204 of the Taft-Hartley Act provides as follows:

“(a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall:

“(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provisions for adequate notice of any proposed change in the terms of such agreement;

“(2) Whenever a dispute arises over the terms or application of a collective bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously;

“(3) In case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this act for the purpose of aiding in a settlement of the dispute.”



No. 14.

There has been introduced in evidence the determination of the National Labor Relations Board relating a labor dispute at the Juneau Spruce Corporation. This was introduced for the sole purpose of showing that no union has been certified at the Juneau Spruce Corporation plant, and this exhibit or any other reference to the National Labor Relations Board or its decisions are to be considered by you as evidence in this case than for the limited purpose for which said determination was introduced.

Given: .....

Refused: .....

Modified: ..... [37]

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[Title of District Court and Cause.]

COURT'S INSTRUCTIONS TO THE JURY

No. 1

Ladies and Gentlemen of the Jury:

We have now reached the point in the trial of this case where it becomes the duty of the Court to instruct you as to the law that will govern you in your deliberations upon the facts of this case.

When you were accepted as jurors in this case you obligated yourselves by your oaths to well and truly try the matter in issue between the plaintiff and the defendants, and a true verdict render according to the law and the evidence as given to

you on the trial. That oath means that you will not be swayed by passion, sympathy or prejudice, and that your verdict will be the result of a careful consideration of all the evidence and the instructions of the Court as to the law.

Neither the statements of counsel engaged in the trial of this case, nor the allegations of the pleadings, except so far as they constitute admissions, are to be considered by you as proof of the facts to which they relate. You should not regard or consider the relative financial condition of the parties to the suit, nor the effect of your verdict upon the parties, or any of the, or attempt to arrive at a verdict based upon your individual or collective opinions as to the abstract principles of justice which should govern the case.

It is not for you to say what the law is or should be regardless of any idea you may have in that respect. It is the exclusive province of the Court to declare the law in these instructions, and it is your duty as jurors to follow them in your deliberations and in arriving at a verdict.

On the other hand it is the exclusive province of the jury to declare the facts in the case, and your decision in that respect, as embodied in your verdict, when arrived at in a regular and legal manner, is final and conclusive upon the Court. Therefore probably the greater ultimate responsibility in the trial of the case rests upon you, because you are the triers of the facts. [39]

## No. 2

By this action the plaintiff seeks to recover from the defendants damages in the sum of \$1,025,000 which it alleges it sustained in consequence of the acts of the defendants. The defendants will hereinafter be called the "International" and "Local 16" respectively.

The complaint alleges that during all the times material here the plaintiff has conducted a lumber manufacturing business, consisting of a sawmill at Juneau, retail lumber yards at Juneau, Anchorage and Fairbanks, and logging camps, and has shipped its products wholly or partially by water in interstate commerce; that, although the International Woodworkers of America was the recognized bargaining agent of plaintiff employees at Juneau, the defendants from April 10, 1948, to the time of bringing this action have nevertheless engaged in and induced and encouraged the employees of plaintiff and of other employers to engage in a concerted refusal in the course of their employment to manufacture, process, transport or otherwise handle or work on any goods, article, materials or commodities of plaintiff, or to perform any services for the plaintiff, for the purpose of compelling plaintiff to assign the loading of its barges with its lumber to members of Local 16 of the International Longshoremen's & Warehousemen's Union rather than to the persons, including members of the International Woodworkers of America, to whom said work had theretofore been assigned, and that neither of the defendants has been certified by the National

Labor Relations Board as the bargaining representative of the employees performing such work; that, as a direct and proximate result of picketing and coercion and of the communication of the fact of picketing to other labor organizations, plaintiff's employees refused to work from April 10 to July 19, 1948, and plaintiff was compelled to close its mill; that, although sufficient employees returned to work to permit of the operation of the mill from July 19 to October 11, 1948, at a greatly increased cost, the plaintiff was prevented from shipping its lumber because of the aforesaid acts of the defendants in consequence of [40] which it was again compelled to close its mill on October 11, 1948.

The defendants in their answers deny the foregoing allegations of the complaint, which places the burden of proving them by a preponderance of the evidence on the plaintiff.

### No. 3

The provisions of the Taft-Hartley law under which this action is brought, so far as material here, are as follows:

“Section 303(a). It shall be unlawful \* \* \* for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal, in the course of their employment, to manufacture, transport or otherwise handle or work in any goods, articles, materials or commodities, or to perform any services, where an

object thereof is forcing or requiring any employer to assign particular work to employees in a particular labor organization \* \* \* rather than to employees in another labor organization.

“Whoever shall be injured in his business or property by reason of any violation of Subsection (a) may sue therefor in any district court of the United States and shall recover damages by him sustained.”

It is undisputed that the defendants are labor organizations within and subject to the provisions of the Taft-Hartley Act.

#### No. 4

The Taft-Hartley Act further provides that any labor organization shall be bound by the acts of its agents and that, in determining whether any person is acting as an agent of another person so as to make such other person responsible for his acts, the question of whether the acts done were actually authorized or subsequently ratified shall not be controlling.

Since a labor organization can act only through its officers and agents, it is responsible for the acts of its officers and agents done within the scope of their authority or employment. An agent is one who, by the authority of his principal, transacts his principal's business or some part thereof and represents him in dealing with third persons. [41]

It is undisputed that Germain Bulcke, John



Barry and the witness Verne Albright were, during the time covered by this controversy, officers of International. Hence, they were agents. But it is for you to say whether what they did, if anything, in committing or assisting in the commission of the acts charged, or any of them, if you find that such acts were committed, was within the scope of their employment.

A person acts within the scope of his employment when he is engaged in doing for his employer either the acts consciously and specifically directed or any act which is fairly and reasonably regarded as incidental to the work specifically directed or which is usually done in connection with such work. If, in doing such an act, a person acts wrongfully, the wrongful act is nevertheless within the scope of his employment.

The scope of employment is to be determined not only by what the principal actually knew of the acts of his agent within his employment but also by what in the exercise of ordinary care and prudence he should have known the agent was doing.

### No. 5

Before the plaintiff may recover from the defendants, or either of them, it must prove by a preponderance of the evidence:

(1) That the defendants, or either of them, acting by or through their officers or agents, did, between April 10, 1948, and April 27, 1949, unlawfully engage in, or induce or encourage plaintiff's em-



ployees at Juneau, Alaska, or employees of other employers to engage in, a concerted refusal in the course of their employment to manufacture, process, transport or otherwise handle or work on lumber of plaintiff, or to perform any services for plaintiff;

(2) For the purpose of forcing and requiring the plaintiff to assign the work of loading its barges with its lumber to members of Local 16 rather than to other persons to whom said work had theretofore been assigned;

(3) That such acts, or any of them, if committed by and as the officers or agents of the defendants, or either of them, were within the scope of the employment of such officers or agents;

(4) That as a direct and proximate cause thereof the plaintiff was damaged.

#### No. 6

If you find from a preponderance of the evidence that during the period stated the defendants, acting separately or jointly, engaged in or induced or encouraged plaintiff's employees at Juneau, Alaska, to engage in, a concerted refusal in the course of their employment to manufacture, process, transport or otherwise handle or work on any lumber, or to perform any services for the plaintiff, and that the object thereof was to force or require the plaintiff to assign the work of loading its barges with its lumber to members of Local 16 rather than to other persons to whom such work had been assigned, and

that such acts directly and proximately caused pecuniary loss to the plaintiff, your verdict should be for the plaintiff in such amount as you find it has been damaged, not exceeding in any event the amount sued for. On the other hand, if you do not so find, your verdict should be for the defendants.

In this connection you are instructed that, if you find from a preponderance of the evidence that the defendants, through their officers or agents acting within the scope of their employment, entered into a conspiracy or understanding to commit the aforesaid acts or any of them for the object or purpose stated, or acted jointly or in pursuance of a common purpose or design, then from the time of entering into such a conspiracy or understanding everything that was done, said or written by any of the officers or agents of either in furtherance of such conspiracy or understanding and to effect the object or purpose thereof, regardless of whether done, said or written in Alaska or elsewhere, is binding on both of the defendants just as though they themselves, through their officers or agents, had done such acts or made such statements, and if the object of the conspiracy was accomplished, resulting in damage, each is liable for the whole thereof regardless of the degree of participation in the commission of the acts charged, or any of them.

A conspiracy, common purpose or design may be proved by direct evidence or by proof of such circumstances as naturally tend to prove it and which are sufficient in themselves to satisfy an ordinary

prudent person of the existence thereof. Therefore, it is not necessary that such a combination or understanding be shown to be in writing. It is sufficient if the evidence shows a combination of or cooperation between two or more persons to accomplish a common purpose.

On the other hand, if you find that the defendants did not act in concert or in pursuance of a common purpose or design, you will consider the case against each defendant separately, and you may find either or both or neither of them liable.

#### No. 7

You are instructed that two or more persons or organizations may participate in a wrong although they do so in different ways, at different times and in unequal proportions. One may plan and the other may be the actual instrument in accomplishing the mischief, but the legal blame will rest upon both as joint actors. Accordingly, one who directs, advises, encourages, procures, instigates, promotes, aids or abets a wrongful act by another is as responsible therefor as the one who commits the act, so as to impose liability upon such person to the same extent as if he had performed the act himself. [44]

#### No. 8

If you should find that plaintiff is entitled to recover against the defendants or either of them, it will then become your duty to assess the amount of damages which plaintiff may have sustained. In such event your verdict should be in such amount

as will fairly and reasonably compensate the plaintiff for the damage which it has sustained and which was proximately caused by the acts complained of, including any loss of profits which it is reasonably certain plaintiff would have received but for such acts.

### No. 9

By proximate cause is meant the probable and direct cause. It is the cause that sets in motion or operation another or other causes and thus produces the injury. It is the cause which directly produces the injury and without which the injury would not have occurred.

### No. 10

In a civil case, such as this is, the burden of proof rests upon the party holding the affirmative with respect to any issue by a preponderance of the evidence. By a preponderance of the evidence, is meant the greater weight of the credible evidence, that evidence which in your judgment is the better evidence and which has the greater weight and value and the greater convincing power. This does not necessarily depend on the number of witnesses testifying with respect to any question of fact, but it means simply the greater weight or the greater value and convincing power and which is the most worthy of belief; and so, after having heard and considered all the evidence in the case on any issue, you are unable to say upon which side of that issue the evidence weighs the more heavily, or if the

evidence is evenly balanced on any particular issue in the case, then the party upon whom the burden rests to establish such issue must be deemed to have failed to prove it. [45]

## No. 12

Subject to the law as contained in these instructions, you are also the sole and exclusive judges of the credibility of the witnesses and of the effect and value of the evidence.

You are, however, instructed that your power of judging the effect of evidence is not arbitrary but is to be exercised by you with legal discretion and in subordination to the rules of evidence; that the oral admissions of a party should be viewed with caution; that evidence is to be estimated not only by its own intrinsic weight but also according to the evidence which it is in the power of one side to produce and of the other to contradict and, therefore, if weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory evidence was within the power of the party offering it, such evidence should be viewed with distrust.

Before reaching a verdict you will carefully consider and compare all the testimony. In determining the credibility of witnesses and the weight to be given their testimony, you decide which witnesses, and what testimony of such witnesses, are to be believed in the same way as you do when someone tells you anything out of court. You size up the



witness, you observe his appearance and demeanor, not his intelligence, whether he is candid and straightforward or shifty and evasive; you consider whether he has an interest in the outcome of the trial and what motive he may have for testifying as he did, the opportunity he had to learn of the facts to which he testified, the probability or improbability of his testimony, his bias or prejudice against or inclination to favor either party, and the extent to which he is corroborated or contradicted and all the other facts and circumstances which shed light on the witness' credibility or the weight of his testimony.

You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds against a less number or against a presumption or other evidence satisfying your minds. The direct evidence of one witness whom you find to be entitled to full credit is sufficient for the [46] proof of any fact in this case. A witness wilfully false in one part of his testimony may be distrusted in other parts. Whenever it is possible you will reconcile conflicting or inconsistent testimony, but where it is not possible to do so, you should give credence to that testimony which, under all the facts and circumstances of the case, appeals to you as the most worthy of belief.

You are also instructed that the opening statements and the arguments of counsel are not evidence, and they are not binding upon you. You



may, however, be guided by them if you find that they are supported by the evidence and appeal to your reason and judgment.

In considering your verdict you are instructed that any testimony which has been ordered stricken by the Court should not be considered by you for any purpose.

#### No. 13

The law requires that all twelve jurors must agree upon a verdict before one can be rendered.

While no juror should yield a sincere conviction, founded upon the law and the evidence of the case, merely to agree with other jurors, every juror, in considering the case with fellow jurors, should lay aside all undue pride or vanity of personal judgment, and should consider differences of opinion, if any arise, in a spirit of fairness and candor, with an honest desire to get at the truth, and with the view of arriving at a just verdict because the law contemplates that the verdict shall be the product of the collective judgment of the entire jury.

#### No. 14

You are to consider these instructions as a whole. It is impossible to cover the entire case with a single instruction, and you should not single out one particular instruction and consider it by itself or separately from or to the exclusion of all the other instructions. [47]

As you have been heretofore instructed, your duty is to determine the facts of the case from the evi-

dence submitted, and to apply to these facts the law as given to you by the Court in these instructions. The Court does not, either in these instructions or otherwise, wish to indicate how you shall find the facts or what your verdict shall be, or to influence you in the exercise of your right and duty to determine for yourselves the effect of evidence you have heard or the credibility of witnesses, because the responsibility for the determination of the facts in this case rests upon you and upon you alone.

No. 15

Upon retiring to your jury room you will elect one of your number foreman, who will speak for you and sign the verdict unanimously agreed upon.

You will take with you to the jury room the exhibits and these instructions, together with four forms of verdict which are self-explanatory. You will return your verdict on one of these four forms.

When you have agreed upon a verdict and your foreman has dated and signed it, you will return it into court in the presence of the entire jury, together with the exhibits and these instructions.

Given at Juneau, Alaska, this 12th day of May, 1949.

GEORGE W. FOLTA,  
Judge.

[Endorsed]: Filed May 13, 1949. [48]

[Title of District Court and Cause.]

## MOTION FOR NEW TRIAL

Come now the defendants in the above-entitled action and move the Court to set aside and vacate the verdict of the jury in this action, and grant a new trial for the following reasons:

1. Errors of law occurring at the trial, and excepted to by defendants, in this, that the Court failed and refused to instruct the jury as requested by defendants in their written instructions duly submitted to the Court and numbered one through fifteen, for the reasons stated in such exceptions, and particularly as follows:

(a) Defendants' requested instruction No. 1 states the public policy of the Labor Management Relations Act, 1947, hereinafter called the "Act," and is material on the issue of whether plaintiff created or maintained the events in controversy to such an extent that plaintiff should not be permitted to maintain this action; and further on the issue of whether plaintiff reasonably acted to mitigate its damages.

(b) Defendants' requested instruction No. 2, for reasons similar to those stated in paragraph (a) hereof; and for the further reason that said Act is applicable only to the territorial limits of the United States.

(c) Defendants' requested instruction No. 3 states that persons or their representatives have a

right to ask for work and crafts have a right to organize, either or both of which the jury could have found to be controlling to define the actions or objects [49] of defendants or defendant Local 16, and consequently the corresponding duty of plaintiff, and require a verdict for defendants.

(d) Defendant's requested instruction No. 4 states matters of law upon which the jury could have found on the evidence that plaintiff created and maintained the events in controversy or failed and refused to mitigate its damages.

(e) Defendants' requested instruction No. 5 defines free speech, coercion and intimidation, all of which were issues of fact in evidence, to such an extent that the jury on the evidence would have found for defendants if they had been instructed as requested.

(f) Defendants' requested instruction No. 6 fully states the law of agency as the same was at issue, and thereby the jury would have returned a verdict for the defendant International Union.

(g) Defendants' requested instruction 7 states the precision with which damages must be proved, and had the jury been so instructed it would have returned a verdict for defendants or at the most nominal damages for the plaintiff.

(h) Defendants' requested instruction No. 8 states the law of succession of labor contracts and also the law of adoption thereof, and the duties to bargain which would have flowed therefrom, and the jury would have found from the evidence that

plaintiff was either successor to the Juneau Lumber Mills contract with defendant Local 16 or had adopted such contractor, from either of which would have arisen the duty of plaintiff to bargain with defendant Local 16 over the events in controversy, and from plaintiff's failure and refusal so to do, would have required a verdict for defendants.

(i) Defendants' requested instruction No. 9 states the law relating to mitigation of damages, which from the evidence would have required the jury to return a verdict for defendants or at the most a verdict for nominal damages.

(j) Defendants' requested instruction No. 10 states the law with regard to whether plaintiff created and maintained the event in controversy upon which upon the evidence the jury would have returned [50] a verdict for defendants, since it was uncontroverted that plaintiff failed and refused to make use of its remedies provided in Section 9 of the Act.

(k) Defendants' requested instruction No. 11 states the law with regard to the creation and existence of a labor contract and its interpretation, and therefrom the jury would have found upon the evidence that there was a labor contract in existence covering longshore work, which was a material point in issue, between plaintiff and Local 16, and the same was interpreted by all to cover longshore work; and found a verdict for defendants.

(l) Defendants' requested instruction No. 12



states the policy of the Act regarding the creation of labor contracts and settlement of all controversies, upon which from the evidence the jury would have found that plaintiff failed and refused to fulfill its legal duties to bargain and to use grievance settlement facilities of the federal government, and thereby would have returned a verdict for defendants.

(m) Defendants' requested instruction No. 13 states the policy of the Act and the effect thereof as stated in paragraph (1) hereinabove.

(n) Defendants' requested instruction No. 15 states the law and the effect thereof as mentioned in paragraph (e) hereof.

2. Errors of law occurring at the trial, and excepted to by defendants in this, that the court instructed the jury as follows:

(a) In Instruction No. 4, the Court in paragraphs 1, 3 and 6 thereof stated the law of agency so narrowly as to confuse the jury and thus require them to return a verdict against defendant International Union.

(b) In Instruction No. 6, the Court instructed the law of conspiracy, on which there was no issue fact at all, and thereby the jury was confused and returned a verdict against defendants.

(c) In instruction No. 11, the Court instructed the jury that Exhibit C was in evidence for a limited purpose only, whereas it was in evidence



generally, and furthermore it was in evidence on a material issue of fact whether a contract existed between Juneau [51] Lumber Mills and Local 16 and between plaintiff and Local 16.

3. Errors of law occurring at the trial and excepted to by defendants, in this:

(a) Plaintiff offered and gave evidence and exhibits, and the Court admitted over the objections of defendants, that plaintiff had not assumed the collective bargaining contract between Juneau Lumber Mills and Local 16; whereas such contract is illegal.

(b) Plaintiff offered and gave evidence and exhibits, and the Court admitted over the objections of defendants, parol evidence the purport of which was to vary the terms of the contract of November 3, 1947.

(c) Plaintiff offered and gave hearsay evidence, and the Court admitted the evidence over objections of defendants, on material issues purporting to be the evidence of members of International Woodworkers of America, on very numerous occasions.

(d) Plaintiff offered in evidence and the court admitted over the objections of defendants the constitution and by-laws of defendants, being Plaintiff's exhibits 3 and 4, whereas the same are immaterial and irrelevant to the issues of law and fact in this controversy.

(e) Plaintiff offered testimony and the court admitted over the objections of defendants that plaintiff had recognized IWA M-271 as the exclu-

sive bargaining agent of its employees, whereas such testimony is immaterial and irrelevant.

(f) Plaintiff offered testimony and exhibits of Verne Albright and John Barry as evidence of agency binding on defendant International Union, whereas such evidence is incompetent and irrelevant for any purpose.

(g) Plaintiff offered testimony and the court admitted the same over objections of defendants, by the witness Hawkins that plaintiff's mill would have a certain future capacity, whereas such testimony is opinion testimony and the said witness was not qualified as an expert or to have had any familiarity with sawmill operation. [52]

(h) Plaintiff offered testimony and the court admitted the same over objections of defendants, by the witness Hawkins that longshoring is not a craft, whereas the said witness was not qualified as an expert on such subject or shown to have any familiarity therewith, and such testimony was opinion, and incompetent.

(i) Plaintiff offered testimony and the court admitted the same over objections of defendant by plaintiff's witness Kirkham to vary the terms of a written document, namely the IWA minutes of April 1, 1948, and such evidence was incompetent, irrelevant and immaterial.

(j) The same with regard to the testimony of plaintiff's witness Flint.

(k) Plaintiff offered testimony and exhibits and the court admitted the same over objections of de-

fendants, by the witness Youns hearsay testimony purporting to be that of Rockwell and Pilfold, and second handed hearsay testimony through Rockwell and Pilfold of which it is purported Albright and Barry had said; and the same was incompetent.

(1) Plaintiff offered testimony and exhibits and the court admitted the same over objections of defendants, by the witness Prawitz of what purported to be market prices of lumber but in the form of a compilation, but the said witness and plaintiff had failed and neglected to make available in any manner the things upon which such compilation was based, and thereby the defendants were denied the right of cross-examination of said witness, and his testimony was incompetent.

(m) Plaintiff offered testimony and the court admitted the same over objections of defendants, by the witness Schultz that members of Local 16 refused to handle plaintiff's lumber but such testimony was immaterial and irrelevant to any of the issues of the controversy and incompetent as hearsay.

(n) Plaintiff offered testimony and the court admitted the same over objections of defendants, by the witness Adams that members of Local 16 refused to handle plaintiff's lumber but such testimony was immaterial and irrelevant to any of the issues of the controversy. [53]

4. Errors of law occurring at the trial and excepted to by defendants, in this:

Defendants offered Exhibit C generally, and Exhibit D for identification generally in evidence, the testimony of the witness Pearson, all on the subject of offers made by local 16 to bargain and its right to bargain with plaintiff, but the court refused the same, although the same was a material issue in the controversy.

(b) The same with regard to offers of Local 16 to arbitrate and the duty of plaintiff to accept such arbitration in this controversy.

(c) The same with regard to the fact that plaintiff, after IWA M-271 refused to bargain concerning longshore work at plaintiff's plant.

(d) The same with regard to the fact that plaintiff never challenged the representation of Local 16 after IWA M-271 refused to bargain concerning longshore work at plaintiff's plant.

5. The said verdict is not supported by sufficient evidence, but is contrary to the evidence.

6. That said Act and the court's interpretation of said Act with regard to the use of free speech and speech generally by Local 16 is unconstitutional in that it abridges arbitrarily the same.

7. That the Court erred in overruling defendant International Union's motion for a direct verdict.

8. That the Court erred in ruling that affidavit of Albright introduced by plaintiff was not generally binding on plaintiff.

9. That the Court erred in overruling defendant Local 16's motion for a direct verdict.

Juneau, Alaska, May 16, 1949.

GEORGE ANDERSEN,

WILLIAM L. PAUL, JR., &

HENRY RODEN,

Attorneys for Defendants.

By WILLIAM L. PAUL, JR.,

Of Counsel.

Copy received May 16, 1949.

[Endorsed]: Filed May 16, 1949. [54]

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[Title of District Court and Cause.]

MOTION FOR JUDGMENT NOTWITHSTAND-  
ING VERDICT RESERVING RIGHT TO  
APPLY FOR NEW TRIAL

Come defendants and move the court to vacate and set aside the verdict of the jury rendered in said action on May 13, 1949, and to make and render a judgment in favor of defendants as prayed for in their answers, on the ground that the court should have directed at the trial of said action a verdict in favor of defendants, and that the ends of justice require said court to render judgment in favor of defendants as aforesaid. The defendants

reserve the right, in the event this motion is denied, to apply for a new trial.

This motion is made and based upon all the pleadings, papers, records and files in the above-entitled court as well as the minutes of the court and the testimony and exhibits adduced at said trial.

GEORGE ANDERSEN,  
WILLIAM L. PAUL, JR., &  
HENRY RODEN,

Attorneys for Defendants.

By /s/ WILLIAM L. PAUL, JR.,  
Of Counsel.

Receipt of Copy attached.

[Endorsed]: Filed May 16, 1949. [55]

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[Title of District Court and Cause.]

MOTION AND AFFIDAVIT FOR ADDI-  
TIONAL TIME WITHIN WHICH TO FILE  
ADDITIONAL GROUNDS AND SUPPORT-  
ING AFFIDAVITS RE MOTION FOR  
NEW TRIAL

United States of America,  
Territory of Alaska—ss.

William L. Paul, Jr., being first duly sworn, on oath deposes and says that he is of attorneys for defendants in the above cause; that defendants



have already filed their motion for a new trial stating in part the grounds upon which the motion for new trial is made that there are additional grounds for such motion upon which defendants rely, namely that the verdict of the jury was materially influenced by passion and prejudice against defendant and for such cause rendered a verdict against defendants on the merits and in the amount of \$750,000; that affiant has commenced his investigation of the actions of the jurors in their deliberations to the end that affidavits be prepared to support said grounds that affiant has been diligent in securing such information and has reasonable ground to believe that such grounds exist; that it will take at least one week to complete such investigation and secure said affidavits.

Wherefore, defendants pray that the time within which to complete the filing of said motion for new trial with support affidavits to be extended one week from May 16, 1949.

WILLIAM L. PAUL, JR.

Subscribed and sworn to before me this May 16, 1949.

LOIS P. ESTEPP,

Deputy Clerk of the Court.

[Endorsed]: Filed May 16, 1949. [56]

[Title of District Court and Cause.]

## ORDER DENYING MOTION FOR NEW TRIAL

Defendants having filed a motion for new trial on the 16th day of May, 1949, and the Court having denied a motion for additional time within which to file affidavits and additional grounds for said motion, and the motion for a new trial having thereafter come on for hearing, and the Court having heard the respective parties and the arguments presented on their behalf by their attorneys of record, and the Court having found from a determination of the issues presented by said motion that the same should be denied;

Now Therefore, It Is Hereby Ordered that the defendants' motion for a new trial be and the same is hereby denied.

Done in open Court this 20 day of May, 1949.

/s/ GEORGE W. FOLTA,  
Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 20, 1949. [57]

[Title of District Court and Cause.]

ORDER DENYING MOTION OF JUDGMENT  
NOTWITHSTANDING VERDICT

The motion of the defendants for judgment notwithstanding verdict in the above-entitled action, having come on for hearing on May 20, 1949, and the Court having heard the argument on the motion as presented by the attorneys of record for the respective parties, and being fully advised in the premises;

It Is Hereby Ordered that said motion for judgment notwithstanding the verdict be, and the same is, hereby denied.

Done in open Court this 20th day of May, 1949.

GEORGE W. FOLTA,  
Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 20, 1949. [58]

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR ADDITIONAL TIME WITHIN WHICH TO FILE ADDITIONAL GROUNDS AND SUPPORTING AFFIDAVITS IN SUPPORT OF MOTION FOR NEW TRIAL

The hearing on the motion of the defendants for additional time within which to file additional grounds and supporting affidavits in support of a motion for a new trial having come on for hearing before the Court on the 20th day of May, 1949, and the Court having heard the arguments on behalf of defendants and the arguments on behalf of plaintiff, as presented by the respective attorneys of record for the parties, and the Court being fully advised in the premises;

It Is Hereby Ordered that said motion filed by defendants for additional time within which to file additional grounds and supporting affidavits for a motion for new trial be, and the same is, hereby denied.

GEORGE W. FOLTA,  
Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 20, 1949. [59]

In the District Court for the Territory of Alaska  
Division Number One at Juneau

No. 5996-A

JUNEAU SPRUCE CORPORATION, a Corpora-  
tion,

Plaintiff,

vs.

INTERNATIONAL LONGSHOREMEN'S &  
WAREHOUSEMEN'S UNION, an Unincor-  
porated Association, and INTERNATIONAL  
LONGSHOREMEN'S & WAREHOUSE-  
MEN'S UNION, LOCAL 16, an Unincorpor-  
ated Association,

Defendants.

### JUDGMENT

The above-entitled action having come on for jury trial on a second amended complaint of plaintiff under a stipulation made in open Court by the respective parties that the Answer and Affirmative Defense of the defendant International Longshoremen's & Warehousemen's Union, Local 16, and the Answer of the defendant International Longshoremen's & Warehousemen's Union, as made to the original complaint of the plaintiff, shall be considered and are the pleadings of the defendants to the second amended complaint of the plaintiff, and under a stipulation of the respective parties that the amended reply of the plaintiff shall be the

pleading to the Affirmative Defense of the defendant International Longshoremen's Union, Local 16;

And said trial having been concluded on May 13, 1949, with a verdict in favor of the plaintiff and against both defendants for the sum of \$750,000;

And the Court having denied the defendants' motions for judgment notwithstanding verdict and for a new trial;

Now, Therefore, It Is Hereby Ordered, Adjudged, and Decreed that the plaintiff be and it is hereby granted a judgment against the defendants International Longshoremen's & Warehousemen's Union and International Longshoremen's & Warehousemen's Union, Local 16, both unincorporated associations, in the sum of Seven Hundred Fifty Thousand (\$750,000.00) Dollars, together with the plaintiff's costs [60] and disbursements herein, to be taxed by the Clerk of the above-entitled Court. including an attorney's fee of Ten Thousand (\$10,000.00) Dollars.

Done in open Court this 20th day of May, 1949.

GEORGE W. FOLTA,  
Judge.

Entered Court Journal No. 19 Pages 162-163.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 20, 1949. [61]



[Title of District Court and Cause.]

### NOTICE OF APPEAL

To Juneau Spruce Corporation, plaintiff above  
named, and its attorneys:

Notive is hereby given that defendants above  
named hereby appeal to the United States Circuit  
Court of Appeals for the Ninth Circuit from the  
orders of the Court of May 20, 1949, overruling  
defendants' motions for judgment for defendants  
notwithstanding the verdict, for new trial, and for  
additional time within which to file additional  
grounds for motion for new trial together with  
supporting affidavits, and from the judgment of the  
Court of May 20, 1949, against defendants.

GEORGE R. ANDERSEN and

WILLIAM L. PAUL, JR.,  
Attorneys for Defendants.

By /s/ WILLIAM L. PAUL, JR.,  
Of Counsel.

Copy received June 9, 1949.

[Endorsed]: Filed June 9, 1949. [62]

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[Title of District Court and Cause.]

### PETITION FOR APPEAL

This Court having overruled defendants' motions  
for judgment for defendants notwithstanding the  
verdict, for new trial, and for additional time within

which to file additional grounds for motion for new trial together with supporting affidavits, and having made and entered its judgment against defendants, all on May 20, 1949; and

The above-named defendants, conceiving themselves aggrieved by the aforesaid orders and judgment of May 20, 1949, in this cause, do hereby appeal from said orders and judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith; and they pray that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said orders and judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and defendants further pray that the above-entitled Court fix the amount of a cost and/or supersedeas bond, and from the date of such determination allow defendants two weeks within which to secure and file such bonds.

This motion is based on the files and records of this cause.

GEORGE ANDERSEN and  
WILLIAM L. PAUL, JR.,  
Attorneys for Defendants.

By /s/ WILLIAM L. PAUL, JR.,  
Of Counsel.

Receipt of Copy acknowledged.

[Endorsed]: Filed June 9, 1949. [63]

[Title of District Court and Cause.]

### ASSIGNMENTS OF ERROR

Come now the defendants above named and say that there is manifest error in the records, proceedings and judgment of May 20, 1949, and therefore submit the following general assignments of error, in this, to wit:

(1) That the verdict and judgment thereon are contrary to the evidence.

(2) That the evidence is insufficient to support a verdict against either defendant.

(3) That the Court and jury erred in permitting a recovery against the International Union for any alleged damages sustained prior to May 8, 1948.

(4) The verdict is contrary to the evidence in that no alleged damages should have been awarded against the International Union for any period prior to May 8, 1948.

(5) The verdict is against the evidence in that there was no evidence sufficient to hold the International Union liable for any alleged damages sustained by the plaintiff prior to May 8, 1948.

(6) The Court erred in admitting a mass of evidence, throughout the trial, which was objected to by the defendants as hearsay, which evidence was prejudicial to the rights of both defendants herein.

(7) The Court erred in refusing to permit defendant International Union to withdraw its demurrer for the purpose of attacking service upon the International Union through service upon Verne Albright.

(8) The Court erred in holding that the District Court for the Territory of Alaska had jurisdiction over the subject matter of this litigation under the Taft-Hartley Act, said Court not being a court of the United States within the meaning of said Taft-Hartley Act.

(9) Errors of law occurring at and during the course of the trial excepted to by the defendants are as follows:

(a) Plaintiff offered and gave evidence and exhibits, and the Court admitted the same over the objections of defendants that plaintiff had not assumed the collective bargaining contract between Juneau Lumber Mills and Local 16; whereas such evidence and exhibits are incompetent, irrelevant and immaterial and contrary to the parol evidence rule.

(b) Plaintiff offered and gave evidence and exhibits, and the Court admitted over the objections of defendants, parol evidence the purport and effect of which was to vary the terms of the contract of November 3, 1947. (Pltfs. Ex. #2.) [65]

(c) Plaintiff offered and gave hearsay evidence, and the Court admitted the same over objections of defendants, purporting to be evidence of members

of International Woodworkers of America, generally on all issues deemed by plaintiff to be material.

(d) Plaintiff offered in evidence and the Court admitted over the objections of defendants the constitution and by-laws of defendants, being plaintiff's exhibits Nos. 3 and 4, whereas the same are immaterial and irrelevant to the issues of law and fact in this controversy.

(e) Plaintiff offered testimony and the Court admitted over the objections of defendants that plaintiff had recognized IWA M-271 as the exclusive bargaining agent of its employees, whereas such testimony is immaterial, irrelevant and incompetent.

(f) Plaintiff offered testimony and exhibits of Verne Albright and John Barry as evidence of agency binding on defendant International Union, whereas such evidence is incompetent and irrelevant for any purpose, and no sufficient foundation was laid for its introduction.

(g) Plaintiff offered testimony and the court admitted the same over objections of defendants, by the witness Hawkins that plaintiff's mill would have had a certain future capacity, whereas such testimony is opinion testimony and the said witness was not qualified as an expert or shown to have had any familiarity with sawmill operation.

(h) Plaintiff offered testimony and the Court admitted the same over objections of defendants, by the witness Hawkins that longshoring is not a craft, whereas the said witness was not qualified as



an expert on such subject or shown to have any familiarity therewith, and such testimony was opinion, and incompetent.

(i) Plaintiff offered testimony and the Court admitted the same over objections of defendant by plaintiff's witness [66] Kirkham to vary the terms of a written document, namely the IWA minutes of April 1, 1948, and such evidence was incompetent, irrelevant and immaterial.

(j) The same with regard to the testimony of plaintiff's witness Flint.

(k) Plaintiff offered testimony and exhibits and the Court admitted the same over objections of defendants, by the witness Youngs hearsay testimony purporting to be that of Rockwell and Pilfold, and second-handed hearsay testimony through Rockwell and Pilfold of what it is purported Albright and Barry had said; and the same was incompetent and no sufficient foundation was laid for its introduction.

(l) Plaintiff offered testimony and exhibits and the Court admitted the same over objections of defendants by the witness Prawitz of what purported to be market prices of lumber but in the form of a compilation, but the said witness and plaintiff had failed and neglected to make available in any manner the things upon which such compilation was based, and thereby the defendants were denied the right of cross-examination of said witness, and his testimony was incompetent.

(m) Plaintiff offered testimony and the Court



admitted the same over objections of defendants, by the witness Schultz that members of Local 16 refused to handle plaintiff's lumber but such testimony was immaterial and irrelevant to any of the issues of the controversy and incompetent as hearsay; and also the witness testified based purely on hearsay regarding an alleged investigation as to whether lumber could or could not be unloaded in various other ports.

(n) Plaintiff offered testimony and the Court admitted the same over objections of defendants, by the witness Adams that members of Local 16 refused to handle plaintiff's lumber but such testimony was immaterial and irrelevant to any of the issues of the controversy.

(10) Errors of law occurring at the trial and excepted to by defendants, in this:

(a) Defendants offered Exhibit C generally, and Exhibit D for Identification generally, in evidence, and the testimony of the witness Pearson, all on the subject of offers made by Local 16 to bargain and its right to bargain generally with plaintiff, but the Court refused the same, although the same was a material issue in the controversy.

(b) The same with regard to offers of Local 16 to arbitrate and the duty of plaintiff to accept and/or initiate such arbitration in this controversy and in the matters out of which it arose, generally.

(c) The same with regard to the fact that plaintiff, after IWA M-271 refused to bargain concerning longshore work at plaintiff's plant.

(d) The same with regard to the fact that plaintiff never challenged the representation of Local 16 after IWA M-271 refused to bargain concerning longshore work at plaintiff's plant.

(e) The Court erred under the Taft-Hartley Act in not instructing the Jury as requested by the defendants that the IWA and ILWU could adjust work claims between themselves.

(f) That the said Taft-Hartley Act as applied to the facts of this case, in relation to trade unions adjusting work claims between themselves is unconstitutional and was unconstitutionally applied.

(11) Errors of law occurring at the trial, and excepted to by defendants, in this, that the Court failed and refused to instruct the jury as requested by defendants in their written instructions duly submitted to the Court and numbered one through thirteen and number fifteen, for the reasons stated in such [68] exceptions, and particularly as follows:

(a) Defendants' requested instruction No. 1 states the public policy of the Labor Management Relations Act, 1947, hereinafter called the "Acts," and is material on the issue of whether plaintiff created or maintained the events in controversy to such an extent that plaintiff should not be permitted to maintain this action; and further on the issue of whether plaintiff reasonably acted to mitigate its damages.

(b) Defendants' requested instruction No. 2, for reasons similar to those stated in paragraph (a) hereof; and for the further reason that said Act is

applicable only to the territorial limits of the United States and not to the Dominion of Canada.

(c) Defendants' requested instruction No. 3 states that persons or their representatives have a right to ask for work and crafts have a right to organize, either or both of which the jury could have found to be controlling, to define the actions or objections of defendants or defendant Local 16, and consequently a corresponding duty of plaintiff to bargain and/or arbitrate the controversy or its causes with defendant Local 16, and require a verdict for defendants.

(d) Defendants' requested instruction No. 4 states matters of law upon which the jury could have found on the evidence that plaintiff purposely created and maintained the events in controversy or failed and refused to mitigate its damages.

(e) Defendants' requested instruction No. 5 defines free speech, coercion and intimidation, all of which were issues of fact in evidence, to such an extent that the jury on the evidence would have found for defendants if they had been instructed as requested.

(f) Defendants' requested instruction No. 6 fully states the law of agency as the same was at issue, and thereby the jury would have returned a verdict for the defendant [69] International Union.

(g) Defendants' requested instruction No. 7 states the precision with which damages must be proved, and had the jury been so instructed it would have returned a verdict for defendants or at the most nominal damages for the plaintiff.

(h) Defendants' requested instruction No. 8 states the law of succession of labor contracts and also the law of adoption thereof, and the parties' mutual duties to bargain which would have flowed therefrom, and the jury would have found from the evidence that plaintiff was either successor to the Juneau Lumber Mills contract with defendant Local 16 or had adopted such contract, from either of which would have arisen the duty of plaintiff to bargain and/or arbitrate with defendant Local 16 over the events in controversy; and the plaintiff's failure and refusal so to do, would have required a verdict for defendants.

(i) Defendants' requested instruction No. 9 states the law relating to mitigation of damages, which, from the evidence, would have required the jury to return a verdict for defendants or at the most a verdict for nominal damages.

(j) Defendants' requested instruction No. 10 states the law with regard to whether plaintiff created and maintained the events in controversy upon which evidence the jury would have returned a verdict for defendants, since it was uncontroverted that plaintiff failed and refused to make use of its remedies provided in Section 9 of the Act.

(k) Defendants' requested instruction No. 11 states the law with regard to the creation and existence of a labor contract and its interpretation, and therefrom the jury could have found upon the evidence that there was a labor contract in existence covering longshore work between plaintiff and de-

fendant Local 16, which was a material point in issue, and the same was interpreted by all to cover longshore work; and found a verdict for defendants. [70]

(l) Defendants' requested instruction No. 12 states the policy of the Act regarding the creation of labor contracts and settlement of all labor controversies, upon which from the evidence the jury could have found that plaintiff failed and refused to fulfill its legal duties to bargain and to use the grievance settlement facilities of the federal government, and thereby would have returned a verdict for defendants.

(m) Defendants' requested instruction No. 13 states the policy of the Act and the effect thereof as stated in paragraph (l) hereinabove.

(n) Defendants' requested instruction No. 15 states the law and the effect thereof as mentioned in paragraph (e) hereof.

(12) Errors of law occurring at the trial, and excepted to by defendants, in this, that the Court instructed the jury as follows:

(a) In Instruction No. 4, the Court in paragraphs 1, 3 and 6 thereof stated the law of agency so narrowly as to confuse the jury and thus require them to return a verdict against defendant International Union.

(b) In Instruction No. 6, the Court instructed on the law of conspiracy, on which there was no issue of fact at all, and thereby the jury was confused and returned a verdict against defendants.



(c) In Instruction No. 11, the Court instructed the jury that Exhibit C was in evidence for a limited purpose only, whereas it was in evidence generally; and furthermore, it was in evidence on a material issue of fact whether a contract existed between Juneau Lumber Mills and Local 16 and between plaintiff and Local 16.

(13) Errors of law occurring at the trial and excepted to by defendants, in this, that the Court gave supplemental instructions to the jury after it had deliberated 21 hours, which [71] amounted to a direction to the jury to return a verdict for plaintiff without grounds therefor, and which said instructions incorrectly stated the law.

(14) Supplemental Instruction No. 2, in addition to being part of the directed verdict, erroneously instructed the jury that certain facts were admitted; whereas, the only purpose of the picketing as the evidence showed was to seek negotiations with the company.

(15) The Court erred in Supplemental Instruction No. 2 in erroneously stating to the jury that the International could be liable for damages sustained prior to May 8, 1948; whereas, no evidence was introduced tending to show or prove any act of the International prior to said date.

(16) The Court erred with respect to Supplemental Instruction No. 2 in erroneously stating to the jury that the International could be held liable for acts prior to May 8, 1948, if it assisted and



abetted Local 16 after May 8, 1948, which statement is contrary to the law and the facts.

(17) The Court erred in Supplemental Instruction No. 3 in that: First, the Court erroneously stated the law of ratification; secondly, erroneously stated the law with respect to agency; and thirdly, erroneously stated that there was no issue for the jury to decide as to Local 16.

(18) With respect to Supplemental Instruction No. 4, the instruction is an oversimplification in a statement of the law with respect to the case and finds no support in the evidence.

(19) The Court erred in Supplemental Instruction No. 5 in the manner following: First, the first paragraph of said instruction erroneously informed the jury that if the International participated in any manner in bringing about the refusal of Local 16 to work products, the Local and the International would be liable. That the words "in any manner" are entirely misleading [72] in relation to the facts of the case and erroneously stated the law. Secondly, that paragraph 2 of said instruction is erroneous in that it depends for validity upon the first paragraph which erroneously states the law to the jury.

(20) The Court erred in holding, in effect, that the said Act and the Court's interpretation of said Act with regard to the use of free speech and speech generally by Local 16 is constitutional and that it does not arbitrarily abridge the same.

(21) The Court erred in overruling defendant International Union's motion for a directed verdict.

(22) The Court erred in ruling that the affidavit of Albright introduced by plaintiff was not generally binding on plaintiff.

(23) The Court erred in overruling defendant Local 16's motion for a directed verdict.

(24) The Court erred in overruling at all, and in the manner and in the scope with which it did, defendants' motion for additional time within which to file additional grounds for motion for new trial and to file affidavits in support thereof in that defendants were wholly prevented from investigating whether the jury had followed the instructions of the Court and had not arrived at their verdict by unlawful means, such as agreeing among themselves in advance to be bound by a quotient verdict, a division among themselves of a consideration of respective portions of the evidence, and had not arrived at their verdict from passion or prejudice against defendants; and had arrived at their verdict from the evidence and not matters not in evidence.

(25) The Court erred in not allowing defendants' motion for judgment notwithstanding the verdict.

(26) The Court erred in not allowing defendants' motion for a new trial.

(27) The Court erred in rendering judgment for plaintiff without notice to defendants. [73]

(28) The Court erred in rendering judgment in favor of plaintiff and against the defendants or either of them.

Wherefore, defendants pray that the judgment may be reversed.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER.

WILLIAM L. PAUL, JR.,

HENRY RODEN,

By GEORGE A. ANDERSEN,  
Attorneys for Defendant.

[Endorsed]: Filed June 9, 1949. [74]

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[Title of District Court and Cause.]

ORDER ALLOWING APPEAL, FIXING COST  
BOND AND SETTING TIME FOR SET-  
TLEMENT OF BILL OF EXCEPTIONS

On this 9 day of June, 1949, this cause came on regularly to be heard upon the petition of the defendants above named for the allowance of an appeal on behalf of defendants from the judgment heretofore made and entered on May 20, 1949, rendering judgment for plaintiff in the sum of \$750,000 against both defendants herein and for fixing the amount of the cost bond on said appeal and for setting a time within which to settle a bill of exceptions; the Court being duly advised in the premises

does hereby find that said judgment is one from which appeal can be taken, the cost bond herein should be fixed in the sum of \$250.00, and 90 days allowed within which to settle a bill of exceptions.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the appeal of said defendants from said judgment be, and the same is hereby, allowed to the United States Court of Appeals for the Ninth Circuit; that a certified copy of the transcript of record, pleadings, proceedings and other necessary documents of this matter be transferred, duly authenticated, to the Clerk of the United States Court of Appeals for the Ninth Circuit at San Francisco, California; that the cost bond be and hereby is fixed in the sum of \$250.00; that ninety days be and hereby is allowed within which to settle the bill of exceptions.

Done at Juneau, Alaska, this 9 day of June, 1949.

GEORGE W. FOLTA,  
Judge.

[Endorsed]: Filed June 9, 1949. [75]

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[Title of District Court and Cause.]

### COST BOND ON APPEAL

Know All Men By These Presents That We, International Longshoremen's and Warehousemen's Union and International Longshoremen's and Warehousemen's Union, Local 16, as principals, and

United States Fidelity & Guaranty Company as surety, are held and firmly bound unto the United States of America in the full and just sum of Two Hundred and Fifty (\$250.00) Dollars to be paid to the said United States of America; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 8th day of June, 1949.

Whereas, lately at the District Court in the First Judicial Division at Juneau, in a suit pending between the above-entitled appellants and appellee, a judgment was rendered against the said appellants, and the said appellants having filed in said Court a Notice of Appeal, Petition for Allowance of Appeal, and Assignment of Errors, to reverse the judgment in the aforesaid suit on appeal to the United States Circuit Court of Appeals to be holden at San Francisco, State of California, on the 15 day of September, 1949, or at any time thereafter. (G. W. Folta.)

Now, the condition of the above obligation is such, that if the said appellants shall prosecute their appeal to effect, and satisfy the judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or if judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest and damages as the appellate court may adjudge and award, if it fail to make its plea good, [76] then the

above obligation is void; else to remain in full force and virtue.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,

By GEO. ANDERSEN,  
Attorneys for Defendant.

WILLIAM L. PAUL, JR.,  
GEORGE ANDERSEN and  
WILLIAM L. PAUL, JR.,

Attorneys for the Principals, International Longshoremen's and Warehousemen's Union and International Longshoremen's and Warehousemen's Union, Local 16.

.....,  
Agent for U. S. Fidelity &  
Guaranty Company.

UNITED STATES FIDELITY & GUARANTY  
COMPANY,

[Seal] By M. E. MONAGLE,  
Its Attorney-In-Fact.

Attest:

M. E. MONAGLE,  
Its Agent.

[Endorsed]: Filed June 9, 1949. [77]



[Title of District Court and Cause.]

CITATION ON APPEAL

The President of the United States to the Above-Named Plaintiff (Appellee), Juneau Spruce Corporation, and to N.R. Banfield of Faulkner, Banfield and Boochever, Its Attorneys, Greetings:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, in the State of California, within forty days from the date of this writ, pursuant to an appeal, filed in the Clerk's Office of the District Court for the Territory of Alaska, Division Number One, at Juneau, wherein the above-entitled appellants are defendants and the above-entitled appellee is plaintiff, to show cause, if any there be, why the judgment in such appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Done at Juneau, Alaska, this June 9, 1949.

/s/ GEORGE W. FOLTA,  
Judge.

Copy received June 9, 1949.

[Endorsed]: Filed June 9, 1949. [78]

[Title of District Court and Cause.]

## PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the Above-Entitled Court:

You will please prepare transcript of record in the above-entitled cause, to be filed in the Office of the Clerk of the United States Court of Appeals for the Ninth Circuit, sitting in San Francisco, California, upon the appeal heretofore perfected to said Court, and include therein the following papers and records, to wit:

(1) Second Amended Complaint.

(2) Special Appearance to Quash Service of Summons and Affidavit of Verne Albright attached thereto.

(3) Order of Court Denying Motion to Quash Summons.

(4) Demurrer of both defendants.

(5) Motion for Leave of International Longshoremen's and Warehousemen's Union to Withdraw Demurrer, together with Affidavit of Germain Bulcke attached thereto.

(6) Motion for Certificate.

(7) Motion for Certificate by Local 16.

(8) Order of Court Overruling Demurrer and Denying Motions.

(9) Answer and Affirmative Defense (Local 16).

(10) Minute Order of April 27, 1949, showing answers running against Second Amended Complaint and new allegations deemed denied.

- (11) Answer (International Union).
  - (12) Reply (of plaintiff to affirmative defense of Local 16).
  - (13) Defendants' requested instructions.
  - (14) Instructions of Court. [79]
  - (15) Motion for new trial.
  - (16) Motion for Judgment for Defendants Notwithstanding the Verdict.
  - (17) Motion for Additional Time Within Which to File Additional Grounds on Motion for New Trial.
  - (17a) Orders of May 20, 1949, overruling motions mentioned in 15, 16 and 17 above.
  - (18) Judgment.
  - (19) Notice of Appeal.
  - (20) Petition for Appeal.
  - (21) Assignments of Error.
  - (22) Order Allowing Appeal and Fixing Cost Bond.
  - (22a) Cost Bond.
  - (23) Citation.
  - (25) Same as Praecipe.
  - (26) Stipulation on Printing of Exhibits stipulated, and exhibits therein stipulated.—Not filed.
- P. M.
- (27) Praecipe.

This transcript is to be prepared as required by law and the rules and orders of this Court and the Court of Appeals for the Ninth Circuit, and is to be forwarded to said Court at San Francisco, California, on or before 40 days from the allowance of

appeal filed herein, to wit, the ..... day of  
....., 1949.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER.

WILLIAM L. PAUL, JR.,  
HENRY RODEN.

By /s/ WILLIAM L. PAUL, JR.,  
Attorneys for Defendants.

Dated: This ..... day of ....., 1949.  
Receipt of Copy acknowledged.

[Endorsed]: Filed June 9, 1949. [80]

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[Title of District Court and Cause.]

SUMMONS

To International Longshoremen's and Warehousemen's Union, and International Longshoremen's and Warehousemen's Union, Local 16, Defendants, Greetings:

In the Name of the United States of America, You, and each of you, are hereby commanded to be and appear in the above-entitled Court, holden at Juneau, in said Division of said Territory and answer the complaint filed against you in the above-entitled action, within thirty days from the date of the service of this summons and a copy of the said complaint upon you, and if you fail so to appear

and answer, for want thereof, the plaintiff.. will take judgment against you, and each of you, for the sum.. specified in said complaint, and will apply to the Court for the relief demanded therein, a copy of which said complaint is herewith served upon you, and which relief demanded is for judgment against each of you in the sum of \$193,000.00 and \$10,000.00 attorneys' fees and Plaintiff's costs and disbursements herein.

And you, the United States Marshal of Division No. 1 of the Territory of Alaska, or any Deputy, are hereby required to make service of this summons upon the said defendant.., and each of them, as by law required, and you will make due return hereof to the Clerk of this Court within forty days from the date of its delivery to you, with an endorsement hereon of your doings in the premises.

In Witness Whereof I have hereto set my hand and affixed the Seal of the above Court, at Juneau, Alaska, this 20th day of October, A. D. 1948.

J. W. LEIVERS,  
Clerk.

By P. D. E. McIVER,  
Deputy. [81]

[Title of District Court and Cause.]

### RETURN ON SUMMONS

I Hereby Certify that the Summons in the above-entitled action dated October 20, 1948, attached hereto, was served upon the defendant International Longshoremen's and Warehousemen's Union, an Unincorporated association, on the 21st day of October, 1948, at Cordova, Alaska, by delivering a copy thereof and a copy of the complaint filed in the above-entitled action, both certified by N. C. Banfield as attorney for plaintiff as true copies of the respective originals, to Verne Albright in his capacity as agent and representative of said defendant.

Witness my hand at Cordova, Alaska, this 21st day of October, 1948.

JAMES H. PATTERSON,  
U. S. Marshal.

By Me E. EDMONDS,  
Deputy.

[Endorsed]: Filed October 23, 1948. [82]



[Title of District Court and Cause.]

## AMENDED REPLY

Comes now the plaintiff and in reply to the affirmative defense of the defendant, International Longshoremen's and Warehousemen's Union Local 16, the plaintiff admits and denies the allegations thereof as follows:

### I.

Plaintiff admits the allegations of paragraph numbered 11 in said defendant's affirmative defense.

### II.

Plaintiff admits the allegations of paragraph numbered 12 of said defendant's affirmative defense.

### III.

Plaintiff admits the allegation contained in paragraph numbered 13 of said defendant's affirmative defense.

### IV.

Plaintiff admits the allegations of paragraph numbered 14 in said defendant's affirmative defense.

### V.

Plaintiff has insufficient knowledge regarding the statements made in paragraph numbered 15 of said defendant's affirmative defense to form a belief regarding the same and therefore denies each and every allegation of said paragraph except that plaintiff specifically denies that Local 16 has been

or now is a party to a collective bargaining agreement with all employers engaged in business along the waterfront in Juneau, Alaska, and further denies that members of Local 16, since the commencement of its operations, have been employees of the company by virtue of said agreement. [83]

## VI.

Plaintiff denies the allegations contained in paragraph numbered 16 of said defendant's affirmative defense.

## VII.

Plaintiff admits the allegations of paragraph numbered 17 of said defendant's affirmative defense except that plaintiff denies that the employees assigned to load lumber aboard said barges usually worked in a different appropriate collective bargaining unit than the one to which the members of Local 16 belonged, denies that the members of Local 16 were ever its employees, and denies that Local 16 constituted an appropriate bargaining unit of plaintiff's employees.

## VIII.

Plaintiff admits the allegations of paragraph numbered 18 of said defendant's affirmative defense except that plaintiff denies that the assertion to the company alleged in said paragraph was made with the acquiescence and consent of I.W.A. Local M-271.

## IX.

Plaintiff admits the allegations contained in para-

graph numbered 19 of said defendant's affirmative defense.

Wherefore, plaintiff prays that said affirmative defense be dismissed and held for naught, and that plaintiff be given relief as prayed for in plaintiff's complaint.

FAULKNER, BANFIELD &  
BOOCHEVER.

By N. C. BANFIELD,  
Of Counsel for Plaintiff.

United States of America,  
Territory of Alaska—ss.

I, Freeman Schultz, of Juneau, Alaska, being first duly sworn on oath according to law, depose and say:

I am the executive vice-president of Juneau Spruce Corporation, and its manager; I have read the foregoing complaint, know its contents, and the facts stated therein are true and correct as I verily believe.

/s/ FREEMAN SCHULTZ.

Subscribed and sworn to before me this 25th day of April, 1949.

[Seal] /s/ N. C. BANFIELD,  
Notary Public for Alaska.

My Commission expires Aug. 21, 1950.

Receipt of Copy attached.

[Endorsed]: Filed April 27, 1949. [84]

[Title of District Court and Cause.]

VERDICT No. 1

We, the Jury, duly impanelled and sworn to try the above-entitled cause, find for the plaintiff and against both defendants and assess plaintiff's damages in the sum of \$750,000.00.

Dated at Juneau, Alaska, this 13th day of May, 1949.

E. K. GUERIN,  
Foreman.

[Endorsed]: Filed May 13, 1949. [85]

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[Title of District Court and Cause.]

COUNTER-PRAECIPE

To the Clerk of the Above-Entitled Court:

You will please prepare transcript of record in the above-entitled cause, to be filed in the office of the Clerk of the United States Court of Appeals for the Ninth Circuit, sitting in San Francisco, California, by including therein, in addition to the papers and records designated by defendants in their "Praecipe for Transcript of Record," the following additional papers and records, to wit:

(1) Summons.

(2) Return on Summons dated October 21, 1948, showing service on defendant International Long-

shoremen's and Warehousemen's Union by service upon Verne Albright.

(3) Plaintiff's Amended Reply to Answer of Defendant ILWU Local 16.

(4) Verdict.

(5) Counter-Praecipe—P. M.

Dated this 13th day of June, 1949.

FAULKNER, BANFIELD &  
BOOCHEVER.

By /s/ N. C. BANFIELD,  
Of Attorneys for Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed June 14, 1949. [86]

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[Title of District Court and Cause.]

#### SUPPLEMENTAL COUNTER-PRAECIPE

To the Clerk of the Above-Entitled Court:

You will please prepare transcript of record in the above-entitled cause, to be filed in the Office of the Clerk of the United States Court of Appeals for the Ninth Circuit, sitting in San Francisco, California, by including therein in addition to the papers and records designated by defendants, in their "Praecipe for Transcript of Record" and "Supplemental Praecipe," and in addition to the papers and records designated in plaintiff's "Coun-

ter-Praecepte," the following additional papers and records, to wit:

1. Plaintiff's Exhibit 2, being Agreement dated November 3, 1947: From the beginning on Page 1 to the end of Article II, all of Article XIII, all of the closing or last paragraph and the signatures.

2. Plaintiff's Exhibit 3, being the Constitution of the International Longshoremen's and Warehousemen's Union: The following portions thereof:

Title Page.

Preamble.

All of Article I, referring to the name of the Union.

All of Article III, referring to the objects of the Union.

All of Article IV, referring to the jurisdiction of the Union.

All of Article V, referring to the powers and duties of local Unions.

Portions of Article VI, referring to officers: Only Sections 1, 3, 4 and 12. [208]

Portions of Article IX, with reference to the per capita tax and assessments: Only Sections 1, 4 and 5.

Portions of Article X, referring to conventions: Only Sections 3, 4 and 7.

Portions of Article XI, referring to charters: Only Sections 1 and 4.

Portions of Article XII, referring to agreements, strikes, etc.: Only Sections 1 and 2.

All of Article XIV, referring to absorption of



members on dissolution of Local.

All of Article XV, referring to referendum votes.

All of Article XVI, referring to withdrawals.

All of Article XVII, referring to transfers.

All of Article XVIII, referring to visiting members, etc.

All of Article XX, referring to union newspaper.

3. Plaintiff's Exhibit 5, being a letter to Mr. E. S. Hawkins from Geo. Schmidt: Only the date, salutation, last paragraph, closing and signature.

4. Plaintiff's Exhibit 11, letter from Pacific Stevedoring and Contracting Company, Ltd., dated August 31, 1948: All of said letter.

5. Plaintiff's Exhibit 14, Juneau Spruce Corporation's financial statement, 28 pages: All of said exhibit.

6. Plaintiff's Exhibit 15, consisting of 18 pages, regarding loss of profits: All of said exhibit.

7. Plaintiff's Exhibit 16, being numerous photographs: All of said photographs.

8. Plaintiff's Exhibit 17, being a statement in Alaska Sunday Press dated June 6, 1948: The heading and date of paper as it appears on Page 8 and that part of an article published on Page 8 commencing on Line 12 of Column 1 of Page 8 and ending at the end of the article.

9. Plaintiff's Exhibit 18, Statement of Mr. Wukich, given to Mrs. Pegues for publication: All of said exhibit. [209]

10. Plaintiff's Exhibit 20, Decision of National Labor Relations Board: All of said exhibit.

11. Plaintiff's Exhibit 24, being a copy of an issue of the Dispatcher, dated September 17, 1948: The heading and date as the same appear on Page 6 and all of the article on Page 6 under the title "Unfair Charges."

12. This Supplemental Counter-Praecipe.

Dated this 13th day of March, 1950.

FAULKNER, BANFIELD &  
BOOCHEVER.

By /s/ N. C. BANFIELD,  
Of Attorneys for Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 14, 1950. [210]

[Title of District Court and Cause.]

ORDER SETTLING BILL OF EXCEPTIONS

Defendants-appellants herewith present as their bill of exceptions the entire transcript of testimony (except voir dire, and opening and closing statements of counsel) taken at the trial of this cause, and pray the same be settled and allowed.

Dated April 11, 1950.

/s/ WILLIAM L. PAUL, JR.,  
Of Attorneys for Appellants.

No objection as to form. April 11, 1950.

N. C. BANFIELD,  
Of Attorneys for Appellee.

ORDER

The foregoing Bill of Exceptions is correct and is hereby settled, allowed and approved.

April 13, 1950.

/s/ GEORGE W. FOLTA,  
Judge.

[Endorsed]: Filed April 13, 1950. [211]

[Title of District Court and Cause.]

### SUPPLEMENTAL PRAECIPE

You will please prepare transcript of record in this cause, to be filed in the Office of the Clerk of the United States Court of Appeals for the Ninth Circuit, sitting in San Francisco, California, upon the appeal heretofore perfected to said court, and include therein the following additional papers and records, to wit:

1. Bill of Exceptions filed April 11, 1950.
2. Order of allowance of same.
3. This supplemental praecipe.

This transcript is to be prepared as required by law and the rules and orders of this court and the said Court of Appeals, and is to be forwarded to said court at San Francisco on or before May 10, 1950.

/s/ WILLIAM L. PAUL, JR.,  
Of Attorneys for Appellants.

Copy mailed to appellee's attorneys at Juneau, Alaska, April 11, 1950.

[Endorsed]: Filed April 11, 1950. [212]

In the District Court for the Territory of Alaska,  
Division Number One, at Juneau

No. 5996-A

JUNEAU SPRUCE CORPORATION, a Corporation,

Plaintiff,

vs.

INTERNATIONAL LONGSHOREMEN'S &  
WAREHOUSEMEN'S UNION, an Unincorporated Association, and INTERNATIONAL  
LONGSHOREMEN'S & WAREHOUSE-  
MEN'S UNION, LOCAL 16, an Unincorporated Association,

Defendants.

## REPORTER'S TRANSCRIPT OF RECORD

Be It Remembered, that on the 27th day of April, 1949, at 2:00 o'clock p.m., at Juneau, Alaska, the above-entitled cause came on for trial before a jury, the Honorable George W. Folta, United States District Judge, presiding; the plaintiff appearing by Norman Banfield and Manley B. Strayer, of its attorneys; the defendant International Longshoremen's & Warehousemen's Union appearing by George R. Andersen, of its attorneys, and the defendant International Longshoremen's & Warehousemen's Union, Local 16, appearing by William L. Paul, Jr., Henry Roden and George Andersen, its attorneys; both sides having announced they

were ready to proceed; empanelling of a jury was commenced and the jury, having been duly admonished by the Court before and after subsequent recesses and adjournments, was duly sworn to try the cause on the 28th day of April, 1949, the trial having reconvened at 2:00 o'clock p.m. with all parties present as heretofore; and

Thereupon, a motion by Mr. Paul for the exclusion of witnesses was allowed by the Court with the qualification that each party might have one witness of their choice remain and that each party would see that the order would be obeyed; Mr. Strayer made the opening statement to the jury in behalf of the plaintiff; Mr. Paul made the opening statement to the jury in behalf of the defendant International Longshoremen's & Warehousemen's Union, Local 16; Mr. Andersen made a supplemental opening statement to the jury in behalf of the defendant International Longshoremen's & Warehousemen's Union; and thereafter it was stipulated between the parties that the International Longshoremen's & Warehousemen's Union is a labor organization; and counsel for the plaintiff requested counsel for the defendants to provide copies of the constitution of the International Longshoremen's & Warehousemen's Union and of the International Longshoremen's & Warehousemen's Union, Local 16, and the names of the officers of the International Longshoremen's & Warehousemen's Union and of the International Longshoremen's & Warehousemen's Union, Local 16, and counsel



for the defendants stated they would check on those matters.

Whereupon, the trial proceeded as follows: [2\*]

EUGENE S. HAWKINS

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Will you state your full name?

A. Eugene S. Hawkins.

Q. Did you occupy any position with the Juneau Spruce Corporation?

A. Yes; as General Manager.

Q. During what time were you General Manager? A. May 1, 1947, to June 1, 1948.

Q. And during that time were you a director of the corporation? A. Yes.

Q. Did you hold any other title?

A. No.

Q. Let me ask you if you remember whether you were Vice President at any time?

A. Yes.

Q. During that whole period? A. Yes.

Q. Mr. Hawkins, were you here when the Juneau Spruce Corporation was incorporated?

A. Yes.

Q. And for what purpose was it incorporated?

Mr. Paul: Your Honor, I think the articles of

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\* Page numbering appearing at bottom of page of original Reporter's Transcript.

(Testimony of Eugene S. Hawkins.)

incorporation would show the purpose of the corporation, and the articles of incorporation would be the best evidence.

The Court: Objection overruled.

A. To produce and manufacture lumber.

Mr. Andersen: Let the record show the objection of either one is the objection of all.

The Court: Yes.

A. To produce and manufacture lumber in the Territory of Alaska, and the sale of such.

Q. Did the Juneau Spruce Corporation purchase any equipment or properties with which it could engage in that business? A. Yes.

Q. What did it purchase?

A. A sawmill, remanufacturing and retail yards located in Anchorage, Fairbanks and Juneau, and a logging camp and logging equipment located in Edna Bay and other places in Southeastern Alaska.

Q. Up at Fairbanks what did the Corporation buy up there?

A. A sawmill and retail yard and buildings and equipment there.

Q. And what did it buy at Anchorage?

A. A retail yard, buildings and equipment.

Q. Now, the operations at Fairbanks, by whom and under what name was that operation conducted prior to the purchase by [4] the Juneau Spruce Corporation?

A. The Independent Lumber Company.

Q. And what was the Independent Lumber Company?

(Testimony of Eugene S. Hawkins.)

A. The Independent Lumber Company was a partnership owned by Roy Rutherford and Roy Ferguson.

Q. Now, what was the—who owned the retail yard at Anchorage?

A. The Juneau Lumber Mills.

Q. And the sawmill here, will you describe the physical layout of the properties in Juneau; that is, where they are and the extent that was purchased?

A. Well, they cover—they are within an area of about three miles in the vicinity of Juneau. Eleven hundred feet of waterfront and dock on South Franklin, and log storage areas north and south of Juneau and across the channel.

Q. And now, tell us what was included as the main parts of the sawmill property at Juneau.

A. A sawmill, and remanufacturing and retail yard.

Q. What do you mean by remanufacture, Mr. Hawkins?

A. That includes everything with the exception of the actual sawing of the logs. There is no breakdown at any definite point.

Q. You mean, if it is cut into a smaller size and planed, that is what you call remanufacturing?

A. Yes.

Q. Was there a retail yard at Juneau? [5]

A. Yes.

Q. Who owned the properties at Juneau?

(Testimony of Eugene S. Hawkins.)

A. The Juneau Lumber Mills, Incorporated?

Q. And purchased by the Juneau Spruce Corporation from the Independent Lumber Company at Fairbanks and the Juneau Lumber Mills, Incorporated, at Juneau?      A. That is right.

Q. Was there a written agreement under which that was taken over?      A. Yes.

Q. I will ask you if this is the agreement?

Mr. Andersen: May we see it, please?

A. Yes. Yes, it is.

(The document was handed to counsel for defendants.)

Mr. Andersen: Rather than clutter the record, do you want a stipulation?

Mr. Banfield: We want it in evidence. I would like to have this marked for identification.

The Court: Can't you have it marked as an exhibit?

Mr. Banfield: Yes, I will offer it as an exhibit.

The Court: There is no use having it marked first for identification.

Mr. Banfield: I would like to offer this document as Plaintiff's Exhibit in Evidence.

The Court: If there is no objection, it may be received [6] as Plaintiff's Exhibit No. 1.

Mr. Banfield: I might call the Court's attention—there is an exhibit marked Exhibit No. 1. It was not in this case.

The Court: I assume the legend on it would show it was not received in this case. If it is re-

(Testimony of Eugene S. Hawkins.)

ceived later on, it will be appropriately marked, and then it couldn't be confused.

Clerk of Court: It has been marked Plaintiff's Exhibit No. 1.

Mr. Banfield: I would like to call the jury's attention to certain portions of the agreement at this time. "This agreement made this 30th day of April, 1947, by and between Juneau Lumber Mills, Inc., a corporation organized under the laws of Alaska, and Independent Lumber Company, a co-partnership consisting of Roy Rutherford and Roy Ferguson doing business at Fairbanks, Alaska, collectively called 'First Party' herein, and Juneau Spruce Corporation, a corporation organized under the laws of Alaska, hereinafter called 'Second Party.'" It provides: "First party agrees to execute and deliver to second party, its successors and assigns, a deed conveying to second party all real and personal property of whatsoever nature and wheresoever located owned by it or in which it has any interest at the time of executing this agreement on April 30, 1947, at 5:00 p.m., excepting moneys on hand, in banks, or accounts, bills or notes receivable and owing to [7] first party included but not limited to the following: The sawmill, yards, and properties of first party at Juneau"—then it goes on—I think counsel will not object—and includes boats, logging camp and various equipment, and that the possession of this property will be given to the Juneau Spruce Corporation April



(Testimony of Eugene S. Hawkins.)

30, 1947, with a quitclaim deed, and various terms regarding the price here, which is computed on a formula of \$595,000.00 plus the cost of inventories and the cost of unprocessed logs and the cost of merchandise on hand and supplies and certain equipment, etc., all of which had to be added after the inventories were taken. "All operations up to the close of business on April 30, 1947, shall be for the account of first party and all operations after that date shall be for the account of second party." Then it says, "It is mutually understood and agreed that first party was unable to complete and to deliver" a deed, and it would be done later, and a certain amount of money would be withheld, and the transfer of the actual documents would take place later. Now, it states here that the "First party agrees that," that is Rutherford and the Juneau Lumber Mills and Ferguson, "to the extent it is able to do so, it will make available, transfer and assign unto second party all private and governmental contracts and contract rights, unfilled orders, leases, permits, easements and other rights and privileges possessed by or used by first party or Juneau Logging Company or Juneau [8] Motorship Company," those being subsidiary companies mentioned in the agreement, "in connection with the businesses now or heretofore operated by them, in so far as the same may be necessary or convenient, for the use of second party in continuing the business heretofore carried on by first party,



(Testimony of Eugene S. Hawkins.)

Juneau Logging Company or Juneau Motorship Company.” There are certain conveyances regarding liabilities and insurance policies, and then it is stated: “It is expressly understood that first party is not assigning to second party and second party is not accepting or assuming any collective bargaining or labor agreements which may exist between first party and its employees except with respect to the return transportation fare above noted.” That was a former provision. Mr. Rutherford advanced money when they brought the men up, and they would agree to pro-rate that fare. “And that second party does not assume and shall not be responsible for any claims or demands for wages, back pay, over-time, travel time, social security industrial accident compensation or other claims of employees arising out of first party’s operations prior to the close of business on April 30, 1947.” In witness whereof, the parties executed the agreement.

Mr. Andersen: May it please the Court, we assumed it was a simple transfer, and I want to object to the—that is, a transfer of property from one to the other—we object to any self-serving part, and whether contracts were kept or taken [9] over as a matter of fact, cannot be shown by this document as to that.

The Court: It seems to me that ground is rather untenable. It was at a time before there would be anything self-serving or the making of a declaration.

(Testimony of Eugene S. Hawkins.)

Mr. Andersen: That is between the parties—Juneau Spruce and Juneau Lumber. The agreement was between them. But I object. It has no binding on us. It is a document to which we are not a party, and we are not bound by any provision. That is the basis.

The Court: There is no statement that it is for that purpose. I assume it is to show the extent of the operations and properties of the plaintiff.

Mr. Andersen: That is what I assumed it was.

The Court: I don't know of any other purpose—and perhaps the purpose to show they didn't take over any labor contracts.

Mr. Banfield: Yes, sir. For the purpose of showing exactly what kind of a deal this was, to show the transfer of physical assets and certain leases and permits and orders that people had placed for lumber, but nothing in labor contracts or accounts receivable, or nothing of that nature. The contract speaks for itself, and Mr. Hawkins will be questioned as to whether or not the agreement was carried out. We offer it for the purposes of all it shows. [10]

The Court: Objection is overruled. You may proceed.

Q. Mr. Hawkins, was the transfer of these properties and the take over by the Juneau Spruce Corporation carried out in the manner specified in this contract of April 30th?

Mr. Andersen: I object as calling for a conclu-

(Testimony of Eugene S. Hawkins.)

sion and opinion of the witness unless some foundation is laid, may it please the Court.

The Court: It doesn't seem to call for a conclusion. He can be asked if he knows.

A. Yes.

Q. You were the active General Manager of the plaintiff after April 30th? A. Yes.

Q. You know what was done and wasn't done to live up to this contract? A. Yes.

Q. And you know that all terms of this contract were carried out? A. Yes.

Mr. Andersen: I object. The questions are leading.

The Court: They may be leading, but it is pretty difficult to state, without taking a great deal of time, in any other form. I think the question has been answered.

Mr. Andersen: Answered twice, I think. [11]

Q. Now, did the Juneau Lumber Mills, Incorporated, continue—I might ask you this. Did Mr. Rutherford continue to stay in Juneau any time thereafter, after this take over? A. Yes.

Q. What was he doing here and for how long?

A. He was taking care of the business of his corporation.

Mr. Andersen: I am going to object. It is incompetent, irrelevant and immaterial, may it please the Court.

The Court: It is pretty difficult to say at this stage whether it is or not. I assume it is preliminary.

(Testimony of Eugene S. Hawkins.)

Mr. Banfield: It is, your Honor. I would like to have the man geographically placed so I can show the witness was in communication with him and then develop what we wish to between the parties.

The Court: Objection is overruled.

Q. How long did Mr. Rutherford continue here during that time?

A. As near as I can recall, about two months.

Q. Let me ask you—where did he spend most of his time?

A. At his bookkeeper's or—I don't know what all he was besides bookkeeper—it wasn't at the plant.

Q. Wasn't at the plant?

A. Wasn't at the plant.

Q. Did you talk to Mr. Rutherford from time to time after this take over?

A. Yes; very frequently. [12]

Q. Did you talk to him before the take over?

A. Yes.

Q. Did you have any conversations with Mr. Rutherford before the take over as to what unions were doing the work in and around the mill?

A. Yes.

Q. What did he tell you?

Mr. Andersen: I object to that as hearsay, may it please the Court.

The Court: Yes; I think it is hearsay.

Q. Now, Mr. Hawkins, when you took over the

(Testimony of Eugene S. Hawkins.)

mill there, what did you do with respect to hiring employees?

A. Well, we worked out a formula with Mr. Rutherford and posted notices in the mill whereby all former employees of the Juneau Lumber Mills who desired to work for the Juneau Spruce Corporation could sign up in the office on the first day of May, or the first day—I don't recall if that was a Sunday or not.

Mr. Andersen: May it please the Court, from the witness' answer, if there is something in writing, I am going to object to this as not the best evidence.

The Court: He isn't questioned as to the contents of any writing, so I think your objection is premature.

Mr. Andersen: I thought he was.

The Court: He was asked as to what was done.

Q. You say you posted notices in the mill?

A. Yes.

Q. Who posted notices in the mill?

A. Both the Juneau Spruce Corporation and the Juneau Lumber Mills.

Q. And how long did you stay on there as Manager after the take over?

A. Until June 1, 1948.

Q. Did you retain any copies of these notices that were posted?

A. No; not that I know of.

Q. Do you have any knowledge of how long they remained posted?



(Testimony of Eugene S. Hawkins.)

A. They were never taken down, only through the process of repairing the mill and being brushed off. No effort was made to take them down.

Q. Were there notices there when you ceased to be Manager?

A. I don't recall of seeing any there at that time.

Q. Now, Mr. Hawkins, what was the effect of this notice?

Mr. Andersen: I think that calls for the witness' conclusion, and I object on that ground.

The Court: As I understand it, these notices are not available now?

Q. Are these notices available?

A. Not to my knowledge.

The Court: Or copies of them? [14]

A. Not to my knowledge.

Mr. Andersen: I submit the objection is good. The witness doesn't know. Apparently he hasn't been here since that time.

The Court: I was about to ask if anybody else knows if they are available or copies of them. What about their availability, or copies, so far as your other witnesses are concerned?

Mr. Banfield: The persons we have had search have been unable to find any.

The Court: Objection is overruled. You may proceed.

Q. Mr. Hawkins, what did the notice of the Juneau Lumber Mills, Incorporated, state?



(Testimony of Eugene S. Hawkins.)

A. It stated that the Juneau Lumber Mills, Incorporated, had sold out their assets to the Juneau Spruce Corporation effective midnight April 30th, and their employment would cease as of that time.

Q. What did the notice of the Juneau Spruce Corporation state?

A. That the Juneau Spruce—the new owners of the Juneau Lumber Mills—office would be open for the signing up of employees, of all former employees, on that specific day, and the mill wasn't operated that day.

Q. What day was that to the best of your recollection?

A. May 1st, to the best of my recollection.

Q. If May 1st was a Sunday, would it have been May 2nd? [15]

A. It would have been May 2nd.

Q. Was there two days of no operation?

A. Yes.

Q. What was the purpose of no operation?

A. To give the men time to be signed up and established on the records of the Juneau Spruce Corporation as such.

Q. Did any longshoremen sign up?

A. Not that I recall; none that I know of.

Q. Let me ask you at this time, Mr. Hawkins, did the Company at any time in hiring men inquire as to whether or not a man belonged to a union?

A. No.

Q. Did it make any difference to the Company whether they did or not?

A. No.

(Testimony of Eugene S. Hawkins.)

Q. Has the Company ever employed any persons who happened to be member of the I.L.W.U. as regular employees of the mill?

Mr. Andersen: To which company do you refer, counsel?

Mr. Banfield: Juneau Spruce.

A. I don't know of a specific case. It could have happened. We didn't inquire. Any employee who requested employment was employed when there was a vacancy for same.

Q. The men who signed up there, were they all members of some [16] union?

A. No, I wouldn't say they were all members of some union.

Q. Do you know that from talking with the men that didn't belong to any union? A. Yes.

Mr. Andersen: That calls for a conclusion and opinion of the witness, may it please the Court.

The Court: He was asked whether he knew.

Mr. Andersen: Well, of course, if you ask a person whether he knows, that throws the door wide open to his conclusions, and, as a short time ago a judge characterized as the most dangerous question that can be asked a witness, it calls for his conclusion when he is allowed to state whether he knows. The question obviously calls for his conclusion.

The Court: If it calls for a conclusion, you can cross-examine him on it, but in the meantime it doesn't seem necessarily to be a conclusion or expression of opinion. There are a lot of answers that

(Testimony of Eugene S. Hawkins.)

certainly would fall within that class as being opinions. For instance, a witness is allowed to state what speed a car was going.

Mr. Andersen: That is a well-known exception to the rule.

The Court: This may be an exception too. In any event it isn't one of the issues, as I see it. Objection is overruled. [17]

Q. Mr. Hawkins, did you have any negotiation with any union of which the members worked at the plant after May 1st? A. Yes.

Q. What union was that? A. I.W.A.

Q. What was the local, do you remember?

A. M-271, I believe.

Q. How did that meeting come about; what was said and done?

A. Well, shortly after the take over we—a committee of the I.W.A. come to the office and requested that we negotiate a contract, and in as much as——

Mr. Andersen: May it please the Court, this is all hearsay.

The Court: It isn't hearsay yet. He said "negotiated."

Mr. Andersen: He said they came and wanted to do thus and so.

The Court: Acts; not what anybody said. The testimony is that they came and did something. That is not hearsay.

Mr. Andersen: I understood the witness said

(Testimony of Eugene S. Hawkins.)

they came and wanted to do thus and so. Obviously it is hearsay, the witness' characterization. I don't want to appear captious.

The Court: So far as the one word he mentioned—"wanted"—it could be hearsay. While it is desirable to skip [18] over that and ask him what was done, these are rather more or less, it seems to me, unimportant details.

Q. Mr. Hawkins, after this committee called on you, what was done at the meeting?

A. I told them that whenever they——

Mr. Andersen: Again, may it please the Court, it is hearsay, so far as both defendants are concerned.

The Court: Yes. He is not answering the questions by testifying what was done but is attempting to say what was said.

Q. Mr. Hawkins, you are not permitted to testify as to what someone else said to you a certain time. You can only tell what was done and what the gist of the conversation was, in other words, what transpired at this meeting and the purpose of it. Now, what was the purpose of this meeting so far as the Juneau Spruce Corporation was concerned?

A. It is a little bit difficult to describe that without saying what I said and what they said and what we agreed upon.

Q. What was agreed?

A. It was agreed——

Mr. Andersen: And again, may it please the

(Testimony of Eugene S. Hawkins.)

Court, it is a conclusion what was agreed upon. The agreement would be the best evidence.

The Court: He merely said they agreed. [19]

Mr. Andersen: And still it is hearsay so far as we are concerned. In another sense it is not admissible. This is not a controversy with the I.W.A. The I.W.A. is not concerned in this case, as I read the pleadings. If it is not hearsay, I still think it is not admissible, may it please the Court, and, if there was an agreement, it must be in writing and that is the best evidence.

The Court: I thought the I.W.A. was alleged to be the certified bargaining agent.

Mr. Andersen: No, your Honor.

Mr. Banfield: We made an opening statement that there were certain agreements and on November 3rd we made a written agreement. These culminated in the written agreement. Counsel knows they were verbal.

Mr. Andersen: Sorry; I don't know that.

Mr. Banfield: I could take a lot of time and say, "Was it written?" He would say, "No." I would ask, "Was it verbal?" He would say, "Yes." And then I would ask, "What was the verbal agreement?" It is perfectly competent to testify what was the agreement verbally and——

Mr. Andersen: That is only hearsay.

Mr. Banfield: To call it hearsay, both sides agreed to hearsay; and that is ridiculous.

Mr. Andersen: I don't believe what I say is



(Testimony of Eugene S. Hawkins.)

ridiculous. I don't want to appear ridiculous or say anything [20] ridiculous. I assume there is a written agreement. May it please the Court, if there was a written agreement that gets it out of hearsay. Then again there is the objection of immateriality. I make both. He apparently wants the witness to testify what was agreed upon at some meeting. Obviously the agreement is his conclusion and also hearsay and also immaterial.

The Court: How would you prove an oral agreement?

Mr. Andersen: By the best evidence; by the parties. But we are not a party to that agreement.

The Court: It might be collateral matter, but it is part of the plaintiff's case. Objection is overruled.

Q. Mr. Hawkins, was it a verbal or written agreement to which you testified?

A. Verbal.

Q. What was the agreement?

Mr. Andersen: Pardon me. Can't I have the date, please?

Mr. Banfield: He said shortly after the take over.

A. That I would negotiate a contract with them when they had shown evidence they represented a majority of the employees that we had.

Q. Was there any agreement made as to how soon they would do this?

Mr. Andersen: The same objection, your Honor.



(Testimony of Eugene S. Hawkins.)

A. As soon as possible.

Mr. Banfield: When there is an objection, you have to wait.

The Court: The same ruling.

Q. Did they claim at that time to represent all the employees in the plant; I mean, did they claim that all the employees in the plant were members of this union, or just part?

A. They claimed the majority.

Q. And did they later prove to you that a majority of the employees of the plant were members of I.W.A., M-271?

A. Yes.

Mr. Andersen: The same objection, may it please the Court; what the union was proving to this man, and now again this gentleman's conclusion.

The Court: Could you not attain the same purpose by just asking him what was done?

Mr. Banfield: Yes.

A. We were presented with signed slips authorizing pay roll deductions to be paid to the I.W.A. from a majority of the employees on record as employees of that date and thereby established the fact they represented the majority of the employees there.

Q. Now, thereafter, Mr. Hawkins, in dealing with the I.W.A. how did you recognize them, or what did you recognize them to be? [22]

A. Exclusive bargaining agent.

Q. For whom?

(Testimony of Eugene S. Hawkins.)

A. For all Juneau Spruce employees.

Q. And tell me, after that when did you have meetings with the I.W.A., or did you have any?

A. Yes.

Q. When were they?

A. It was very shortly after that that they brought in an agreement which they had drawn up, and I told them I would read it and consider it at the earliest possible date and give them an answer.

Q. Did it take them very long to get these slips that you spoke of?      A. No.

Q. What happened after that with regard to this agreement with the I.W.A.?

A. We talked several times about the provisions in it. It was revised and changed several times, and ultimately I sent—they sent a copy to their International, and I sent a copy to Mr. Card of Coos Bay, and then it was sent back to the International again and finally signed up on November 3rd.

Q. Signed on November 3, 19——

A. 1947.

Q. 1947. I will ask you, Mr. Hawkins, if this is a copy of [23] the agreement you stated was signed on November 3, 1947?      A. Yes; this is it.

Mr. Andersen: It may go in subject to the same general objection.

The Court: The record may show the same objection and the same ruling.

Mr. Andersen: Yes, your Honor.

(Testimony of Eugene S. Hawkins.)

Mr. Banfield: We offer the agreement as an exhibit.

The Court: It may be admitted as Plaintiff's Exhibit No. 2.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit 2.

Mr. Banfield: This agreement provides in part as follows: "The general purpose of this Agreement is in the mutual interest of the Employer and the employees to provide for the operation of the plant hereinafter mentioned, under conditions which will further to the fullest extent possible the safety of the employees, economy of operation, quality and quantity of output, elimination of waste, cleanliness of the plant and protection of property. It is recognized by this Agreement to be the duty of the Employer and employees to cooperate fully, individually and collectively, for the advancement of said conditions.

"Whereas, the parties hereto desire to establish the standards of hours of labor and other conditions under which [24] the employees shall work for the Employer during the term of this Agreement and desire to regulate mutual relations between the parties hereto:

"Now, Therefore, this Agreement is made and entered into this 3rd day of November, 1947, by and between the Juneau Spruce Corporation, Juneau, Alaska, hereinafter designated as the Employer, and Local M-271, International Woodworkers of

(Testimony of Eugene S. Hawkins.)

America, Juneau, Alaska, hereinafter designated as the Union.

“Witnesseth:

“That in consideration of the mutual promises and understandings made in good faith both parties hereby agree to and with each other, to-wit:

“Article I—Union Recognition

“The Union is hereby recognized as the sole and exclusive collective bargaining agent for all the employees of the Employer in its sawmill, manufacturing and retail departments at Juneau, Alaska, excluding superintendents, foremen and office employees, on all matters pertaining to wages, hours of labor and other conditions of employment in the aforesaid plant, subject to the provisions of Article II as provided in this Agreement.”

This agreement goes on and sets up a Shop Committee to deal with the employer, and provides for a method of settling disputes whereby, “Any employee or group of employees having a grievance against the Employer may present his or their complaint [25] to his or their foreman, who shall attempt to settle the grievance or dispute amicably and promptly. It is understood that any settlement arrived at shall not be inconsistent with the terms of this Agreement, and further that the Union representative shall be given opportunity to be present at such conference.” “In the event that machinery provided in Article III, Sections (a) and (b) shall fail to adjust the grievances, the services of the

(Testimony of Eugene S. Hawkins.)

Territorial Department of Labor shall be requested within forty-eight (48) hours thereafter. If within a reasonable time the Commissioner shall have notified the parties of interest of failure to adjust said grievance there shall be no stoppage of work for a period of forty-eight (48) hours thereafter.

“(d) Any settlement arrived at by the methods designated in Article III, Sections (a), (b) and (c) shall be subject to acceptance by the Employer and the Union, and if accepted shall be binding on the Employer, the employee or employees involved, and the Union.

“(e) There shall be no strike sanctioned or approved by the Union and no lockout instituted by the Employer during the life of this Agreement until every means of settlement provided for in this Agreement has been exhausted. At no time shall Union employees be required to act as strikebreakers or go through any picket line which is recognized by the Union as legal, however, Union employees whose work is required for [26] protection of property and equipment during any shutdown, shall stay on the job if requested by the Employer and shall not be considered as strikebreakers.”

This agreement goes on and provides for hours of labor and seniority, for hiring and discharging of employees, holidays, vacations, and union security. “It is understood and agreed that the following provisions relative to union security shall not become effective until the National Labor Relations Board shall have certified, as required by Section



(Testimony of Eugene S. Hawkins.)

8 (a) (3) of the Labor Management Relations Act, 1947, that a majority of the employees have voted to authorize such an agreement:

“(a) All employees who are members of the Union thirty (30) days after the effective date of this Agreement, and all employees who thereafter become members of the Union, shall as a condition of continued employment maintain membership in good standing in the Union.”

Then the wage provision, and a termination clause providing that it be effective “until April 1, 1948, and shall be continued thereafter for yearly periods unless written notice of termination or revision is given by either party, subject to the terms set forth in this Article.”

Whereupon, the jury was duly admonished and Court adjourned until 10:00 o'clock a.m., April 29, 1949, reconvening as per adjournment, with all parties present as heretofore [27] and the jury all present in the box; whereupon, the trial proceeded as follows:

Mr. Banfield: May we have permission to call a witness out of order? We have a representative of the Local Union we would like to put on this morning.

The Court: You may call him.

Mr. Andersen: Is it your intention to prove certain documents?

Mr. Banfield: Yes.



Mr. Andersen: I have a copy of the Constitution you wished. I have also been advised this Constitution to which you refer is apparently the one here. You wanted a list of names of the officers. I will read into the record——

Mr. Banfield: For 1947-48?

Mr. Andersen: Yes; during the time you mentioned. I am doing this in the interest of time. The officers of Local 16, Juneau, defendant union, in 1947 were as follows: President, A. Wukich; Financial Secretary, first half, A. Burgo; second half, C. Hellonen; Recording Secretary, first half, D. McCammon; second half, A. Laiti. 1948: President, first half, A. Wukich; second half, E. Pearson; Recording Secretary, first half, A. Laiti; second half, Herb Lenz; Financial Secretary, first half, C. Hellonen; second half, A. Laiti. 1949: President, E. Pearson; there was no recording secretary; Financial Secretary, Alex Laiti. [28]

Mr. Strayer: I was going to ask that these be marked for identification so we can identify them in the record. The Constitution of the International should be Plaintiff's Exhibit 3 and——

The Court: Could they not be introduced at this time?

Mr. Strayer: So far as the International Constitution, yes; but I haven't had an opportunity to see the Local Constitution before. I don't know if it is material. I will look it over during recess.

Mr. Andersen: Which is which?

Mr. Strayer: 3 will be the International Constitution.

Mr. Andersen: For identification; and 4 for Identification will be the Local; is that correct?

Mr. Strayer: Yes.

The Court: I doubt now whether the record shows now that it was stipulated by the parties that the persons whose names you called off, and their titles, were the officers of the Local. I think that that mention of it, implying a stipulation, was not read into the record.

Mr. Andersen: I think he was taking the word of counsel that that was the fact.

Mr. Strayer: I have no independent information. It may be agreed that if an officer of the Local were called he [29] would state that those were the officers at that particular time.

The Court: The record may so show.

Mr. Strayer: For the record, the document, Plaintiff's Exhibit 3, the Constitution of International Longshoremen's & Warehousemen's Union, is admitted in evidence by stipulation?

Mr. Andersen: We will object.

Mr. Strayer: You will stipulate to Identification, Plaintiff's Exhibit 3, and that it is a true copy of the Constitution of the International Longshoremen's & Warehousemen's Union, as amended to April 11, 1947?

Mr. Andersen: No. As of that day.

Mr. Strayer: It says on the face, "As Amended to April 11, 1947."

Mr. Andersen: Whatever it says.

Mr. Strayer: And may it also be stipulated for

the record that document, Plaintiff's Exhibit 4 for Identification is a true copy of the Constitution and By-Laws of Local 16 of the International Longshoremen's & Warehousemen's Union, and dated June 30, 1942, Revised February 26th, and it states, March 6 and 20, 1944.

The Court: The question remains as to the admissibility.

Mr. Strayer: Yes, your Honor. [30]

CLARENCE HELLONEN

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Strayer:

Q. Will you state your name.

A. Clarence Hellonen.

Q. Are you a member of the International Longshoremen's & Warehousemen's Union?

A. I am a member of I.L.W.U., Local 1-16.

Q. Local 1-16 or Local 16?

A. Local 16; District 1, Local 16.

Q. Do you hold any official position with that Local?

Mr. Andersen: May I interrupt, counsel? You also requested in your subpoena the presentation of certain documents. This officer is not in charge of any such documents. If you wish, I will arrange with the proper officer of the Local to produce such documents if they are available.

Mr. Strayer: Thank you. That will be all, Mr. Hellonen.

(Witness excused.)

EUGENE S. HAWKINS

resumed the witness stand.

Direct Examination

(Continued)

By Mr. Banfield:

Q. Mr. Hawkins, you testified about a meeting of the I.W.A. Local representatives and of bargaining with them. Now, [31] I would like to know, if at that meeting with the I.W.A. after they had shown, as you testified, that they were representative of over half the employees, whether there was any understanding or agreement reached there regarding any old contracts of your predecessor company, Juneau Lumber Mills?

Mr. Andersen: May it please the Court, I desire to object. The question calls for conclusions. To ask for any understanding, it enters this area of complete definability. I would like again to object to the question which calls for the witness' conclusions.

The Court: Well, I don't know whether counsel means a mere understanding or an agreement, but it seems to me that the witness would be competent to state whether as a result of that discussion or conference there was an agreement of that kind or

(Testimony of Eugene S. Hawkins.)

some other kind arrived at, and he may answer yes or no.

Mr. Andersen: May I again respectfully state, all the witness can testify is what was said. Whether it was an agreement or something else is not for the witness to determine, but for another body to determine. I don't believe he should characterize what is an agreement or understanding; I don't think he should. He should say what was said.

The Court: I thought you were objecting to the details rather than the effect. [32]

Mr. Andersen: I don't want the witness to testify to conclusions. I want him to testify to what was said, and then, if it is relevant or irrelevant, it can go in or stay out.

Mr. Banfield: We agree; that is correct. In negotiations of this kind, it is perfectly competent to say what was said.

The Court: I misapprehended the nature of your objection.

Mr. Andersen: That was the nature of my objection yesterday.

Q. Was anything said in this conference——

Mr. Andersen: May I interrupt? Would you put the date of the conference if possible?

Q. The conference, Mr. Hawkins, after the I.W.A. had proved to you that they represented over half of the employees of the plant; that is the conference we are talking about.



(Testimony of Eugene S. Hawkins.)

Mr. Andersen: The date please, counsel.

Mr. Banfield: The witness testified that some time had elapsed after May the 1st and that it was shortly after that and——

Mr. Andersen: I think I will object that no foundation has been laid. I request that a proper foundation be laid.

The Court: A proper foundation be laid for what? [33]

Mr. Andersen: Time, place, persons present.

The Court: Well, I think that the time should be made more certain if possible.

Q. Mr. Hawkins, going back, you testified yesterday about your taking over on May 1st?

A. Yes.

Q. Now, how long was it after that that they gave this evidence or proof to you that they represented over half the employees?

A. It was by the time the first pay roll had been made out.

Q. Would that be two weeks, a month, or what?

A. That would be three weeks.

Q. And how long was it after that that the conference was held, the next conference was held with the I.W.A.?

A. About a week.

Q. And who was present at this conference?

A. Tim O'Day, Glen Kirkham.

Q. Who was Tim O'Day?

A. The Secretary of the I.W.A.

Q. And who was Mr. Kirkham?



(Testimony of Eugene S. Hawkins.)

A. The President.

Q. Now, at this conference was there any agreement reached—what was said by the I.W.A. with respect to how you could operate in the future?

Mr. Andersen: To which we will object, may it please [34] the Court, as hearsay and immaterial.

The Court: I thought you wanted that to come out.

Mr. Andersen: I said, your Honor, the proper way was to determine what was said, then I would object as to admissibility. I object now that it is immaterial and hearsay.

The Court: The statement you made a while ago is incompatible with hearsay. If you want facts or statements made there which would show whether there was any contract or agreement which resulted therefrom, it seems you are precluded from objecting that it is hearsay.

Mr. Andersen: Well, your Honor, this witness is the plaintiff's witness, and I have never heard it said yet that the other side of the case, that the other side wanted evidence to go in. Counsel is trying to prove some sort of case and trying to put in some sort of evidence. As I read this case and understood the issues, I fail to see the materiality of this line of questioning; I not only fail to see the materiality, but I contend respectfully, your Honor, that it is hearsay and inadmissible for that reason.

(Testimony of Eugene S. Hawkins.)

The Court: Well, you mean whether or not an agreement resulted there of the kind implied by his questions is immaterial?

Mr. Andersen: I consider it such, your Honor, under the issues as framed.

The Court: Objection is overruled then on that ground. I am still unable to understand your objection of hearsay in view of your statement a few moments ago that the witness relate what was said instead of conclusions.

Mr. Andersen: That is true. When this witness testified an agreement was made, that is his conclusion. Whether an agreement was in fact made or not, I said the proper way, and counsel agreed, was not by the witness boldly saying he entered into a contract, but by stating what was said.

The Court: But when he attempts to do that, you object.

Mr. Andersen: That brings up the second question—materiality.

The Court: I have ruled on that. Proceed.

Q. Mr. Hawkins, what was said by the I.W.A.?

Mr. Andersen: The same objection, may it please the Court.

The Court: Overruled.

Mr. Andersen: And rather than repeat, the objection may run to the line of questioning, with the same ruling?

The Court: The record may show that.

Q. What was said by the I.W.A. representa-

(Testimony of Eugene S. Hawkins.)

tives regarding the manner in which you would operate at the plant; that is, what did they offer, and what did you offer; tell us what was done? [36]

A. We had quite a conference, and all I could relate was the ultimate conclusion of that conference in which it was mutually agreed——

Mr. Andersen: Again I object, may it please the Court, to this witness' characterizing—as the witness stated, “All I can do is give my conclusion.” I submit it is inadmissible in the light of our last discussion, may it please the Court.

The Court: Well, I have tried to accommodate the views of counsel here, but since it now appears that the agreement that, it was alleged, resulted followed perhaps hours of discussion at which thousands of things might have been said, it is impractical to put in all those things and it is unreasonable to expect the witness to relate each statement made by anybody that participated in the discussion and, hence, I think we will have to go back to the rule that the witness may state the conclusion. You may cross-examine him on it.

Q. Will you relate what was agreed as a result of your negotiations?

A. That the Juneau Spruce Corporation would continue to operate under the same rate of pay and the same hours of work as had been enforced under the Juneau Lumber Mills, and that other conditions would be talked over and agreed upon as they came up during the course of a forming of the new contract. [37]

(Testimony of Eugene S. Hawkins.)

Q. Now, did anything come up with respect to who they would bargain for? A. Yes.

Mr. Andersen: I am going to object to that. It is a leading question, leading and suggestive, may it please the Court.

The Court: Objection is overruled. It is a preliminary question.

A. Yes.

Q. And did you meet regarding it?

A. Yes.

Q. And what was decided?

A. It was decided that they would represent all of our employees with the exception of those on our tugboats and in our logging camps.

Q. Did it result in a binding and definite understanding on that point? A. Yes.

Mr. Andersen: I am going to move the last question be stricken and the last answer be stricken; the same objection, may it please the Court.

The Court: Maybe the "binding" might be eliminated from it, but the answer that there was an agreement reached will stand.

Q. Did you consider it to be a binding agreement? [38]

Mr. Andersen: To which I object as calling for his conclusion.

The Court: You might ask him, did the parties operate under it.

Q. Did you operate under it as a binding agreement? A. Yes.

(Testimony of Eugene S. Hawkins.)

Q. And did you live up to that agreement?

Mr. Andersen: The same objection, may it please the Court; and immateriality.

The Court: Objection overruled.

A. Yes.

Q. Now, Mr. Hawkins, as a result of this conference soon after or about a month after the take over of the properties, was there any understanding or agreement reached with respect to whether or not there was any written contract in effect as a holdover from the predecessor company?

Mr. Andersen: I object to the line of questions.

The Court: Repeat the question.

Court Reporter: "Now, Mr. Hawkins, as a result of this conference soon after or about a month after the take over of the properties, was there any understanding or agreement reached with respect to whether or not there was any written contract in effect as a holdover from the predecessor company?"

The Court: Objection overruled.

Mr. Andersen: May we have a foundation laid for [39] this?

The Court: Specifically as to the time.

Mr. Banfield: This is a conference about a month after the take over.

The Court: Is it the same conference?

Mr. Benfield: Yes.

A. Yes.

Q. What was that agreement?

A. We explained——



(Testimony of Eugene S. Hawkins.)

Mr. Andersen: The same objection.

The Court: The same ruling.

A. We explained our take-over agreement basically to the president and secretary, and they were able to see whereby we didn't take over the predecessor's agreement.

Mr. Andersen: I move that be stricken.

The Court: That last part is incompetent and will be stricken.

Q. What did they say respecting that?

A. That is basically what they said that, after we explained our position, that they could see where it would necessitate working out a contract with the Juneau Spruce Corporation.

Mr. Andersen: The same objection as to his conclusion, and I move it be stricken.

The Court: Objection overruled. [40]

Q. Did they acknowledge it was not binding upon you?

Mr. Andersen: May I interrupt to state to your Honor that there is no showing here that these people can't be produced rather than have hearsay.

Mr. Banfield: We could produce Mr. Tim O'Day and the other one. As the Court well knows, it is impossible to question three at one time, only one at a time, and we are entitled to question any one of them as to what was said and done in negotiations between the two parties resulting in a verbal agreement.

The Court: Objection is overruled.



(Testimony of Eugene S. Hawkins.)

Mr. Banfield: And also, may it please the Court, if we come to the point of a meeting and no agreement, we are still entitled to show what was done between them.

The Court: You may proceed.

Mr. Banfield: Repeat the question, please.

Court Reporter: "Did they acknowledge it was not binding upon you?"

The Court: It isn't clear to me what is referred to in that question—it not being binding.

Mr. Banfield: If the Court please, yesterday we had the testimony here regarding the fact that there had been a former agreement between the Juneau Lumber Mills and the I.W.A. The question is, did they acknowledge it was not binding on the Juneau Spruce Corporation. [41]

Mr. Andersen: As I understand it, I thought you were talking about four weeks after the take over. I made an objection. Counsel said it was the same conference. The only question was referring to four weeks after. Now you are talking about a written agreement. I don't wish to be confused. I am sure the jury doesn't wish to be confused.

Q. Mr. Hawkins, at these conferences was there any discussion of a prior agreement?

Mr. Andersen: I object to any question about subjects in the conference. I submit under the rules of evidence, if you wish to interrogate a witness about meetings, by practice and custom you

(Testimony of Eugene S. Hawkins.)

lay a foundation—the time, place and persons present; otherwise, as your Honor stated, we will be unable to cross-examine and will be going all over it and wasting the time of the Court.

The Court: I think for the benefit of all parties, I think it should appear clearly, the occasion as well as those present and also the particular agreement that was under discussion or that resulted. I know it isn't clear to me.

Q. Now, Mr. Hawkins, at the meeting between the Juneau Spruce Corporation and the I.W.A. one month after the take over, that would be about June 1st, at which Mr. Kirkham, the President of the I.W.A., and—who is the other—Mr. O'Day, as Secretary of the I.W.A., and yourself, as Manager of the Juneau Spruce Corporation, was present, was there any [42] discussion regarding the prior labor contract or a labor contract between the I.W.A. and Juneau Lumber Mills, Incorporated?

A. Yes.

Q. Tell us what was said regarding that contract.

A. That was brought up in the explanation of our take-over agreement, that the Juneau Lumber Mills, Incorporated, was a corporation still in existence, and Mr. Rutherford, the President, had announced to us, the Juneau Spruce Corporation, that he intended to remain an active corporation and that their agreement with the Juneau Lumber Mills, therefore, was still binding on the Juneau Lumber Mills and it would necessitate us in negotiating a new agreement with them.

(Testimony of Eugene S. Hawkins.)

Mr. Andersen: May it please the Court, I want to move that that be stricken. Obviously it is a conversation the witness had with Mr. Rutherford, as I understand the answer.

Q. No. This was the discussion, this entire discussion, and what was said was what happened at this meeting? A. Yes.

Q. Who explained that the Juneau Lumber Mills was still in existence? A. I was——

Mr. Andersen: I assume my objection heretofore [43] might run to this line of questioning, and the same ruling of the Court?

The Court: Yes.

Q. With respect to this agreement, was it acknowledged and agreed by both parties, the Juneau Spruce Corporation and the I.W.A., that this former contract was not binding upon the Juneau Spruce Corporation?

Mr. Andersen: I object as calling for the conclusion of the witness.

Mr. Banfield: It is a question of fact, your Honor.

The Court: Objection overruled.

Q. Was it agreed or wasn't it?

A. Yes.

Q. Now, Mr. Hawkins, were you present in Juneau all the time during May, June and July of 1947? A. Not all the time, no.

Q. During your absence and during those three months who was in charge of the office and the

(Testimony of Eugene S. Hawkins.)

management of the Company's affairs at Juneau?

A. George Schmidt.

Q. Now, Mr. Hawkins, during July—tell us first, what was the first meeting you had with any longshoremen's representatives, these representatives of Local 16? A. In July.

Q. And was that—at whose request was that meeting? [44] A. At their request.

Q. And who was present?

A. Mr. Ford and Mr. Wheat and another fellow—I don't recall his name.

Mr. Roden: July, 1947?

Q. Yes; July, 1947. Mr. Hawkins, who did they represent themselves to be?

A. The officials of the Local Longshoremen's Union 1-16.

Q. What did they claim to have authority to do?

A. To negotiate an agreement for certain work of the Juneau Spruce Corporation.

Q. And what did they ask that this work should include in this agreement? Did they ask that an agreement be negotiated? Answer that first.

A. Yes.

Q. Just relate now the whole conversation that took place there between these two gentlemen and yourself.

Mr. Andersen: I would like to interpose a separate objection so far as the International is concerned, may it please the Court, that there is no foundation for the admission of any of this evidence in so far as the International is concerned.

(Testimony of Eugene S. Hawkins.)

I assume the Court will want to take the objection and not rule at the present time.

The Court: Unless the International is connected up with it, the jury will be instructed——

Mr. Andersen: I just want to preserve the record, may it please the Court, at this time.

Q. Go ahead, Mr. Hawkins.

A. Well, they wanted first——

Mr. Andersen: May I against object on the ground that the witness has a habit of characterizing—such as, “They wanted to.” I don’t want to make too many objections. I would like for the witness to say what was said rather than his opinion of what was said. It is more effective—what was said, rather than what he concludes they said.

Q. What did they say, Mr. Hawkins?

A. They said they wanted to negotiate an agreement both coastwise and local for the work of handling our products from the first place of rest to and across the bull rail.

Q. Now, did they explain to you what they meant by a coastwise agreement? A. Yes.

Q. What was that?

A. That was a general agreement which was in effect in Pacific Coast ports.

Q. And did they explain what they meant by a local agreement?

A. That was one which pertained only to the Juneau Port here and special provisions for this locality.



(Testimony of Eugene S. Hawkins.)

The Court: Did you say a moment ago “general” or “gentlemen’s” agreement? [46]

A. General.

Q. Now, Mr. Hawkins, was this to be in one agreement or in two separate agreements?

A. Two separate——

Q. What did they say?

A. Two separate agreements.

Q. Now, did they explain what they meant by they wanted to work between, you said, the last place of rest and the bull rail—the first place of rest and the bull rail; did they explain that?

A. Yes.

Q. What did they explain it to be?

A. In effect when we stacked lumber in our yard from the main sawmill, that would be considered the first place of rest. From there it would be taken, unstacked and taken to our remanufacturing plant and processed to the customer’s specifications, and taken to the bull rail or in the vicinity underneath our crane to accumulate in lots assigned to the customer and the use of our carriers and lift trucks to facilitate this movement.

Q. Trace that through and show just what the longshoremen wanted to do.

The Court: First maybe he better explain the significance of the bull rail in the operation.

Q. What is the bull rail? [47]

A. That is the face of the dock.

Q. In other words, the edge of the dock on the water side?

A. Yes.



(Testimony of Eugene S. Hawkins.)

Q. Now, will you trace through and explain what it was, which operations and which work, the longshoremen said they wanted to do?

A. Unstacking the lumber from our storage area, delivering it to the remanufacturing plant, and assembling it at the place where we accumulated these customers' orders in lots.

Q. Now, what would the individual workers be doing; would they be handling it by hand or machine or what?

A. They would be handling it practically altogether by lift trucks and carrier—lumber carrier.

Q. You mentioned you take your lumber and make it to the specifications of the customers, I believe. Will you explain what you mean by that?

A. We cut entirely on orders.

Q. Pardon me. You mean after the order is received?

A. Yes.

Q. Go ahead.

A. We manufacture that in the main sawmill, then accumulate it in our storage area until the order was cut out in the rough, then put it through the remanufacturing plant for processing to the various patterns and grades and [48] lengths, and then accumulate this on the face of our dock in the vicinity of our crane preparatory to loading it on.

Q. You mean to imply this storage area is the whole yard down there?

A. Yes.

Q. And it stays out in the yard until you put it back in the remanufacturing plant to groove and plane it for particular orders you have to fill?

('Testimony of Eugene S. Hawkins.)

A. Yes.

Q. Before that, where is particular lumber put, where does it rest next?

A. In the vicinity of our crane on the face of the dock.

Q. How close would that be to the crane?

A. Within reach of its gear.

Q. And then the work you are describing as the longshoremen's work would be taking it into the manufacturing plant for processing and taking it out and putting it in lots under the crane?

A. Yes.

Q. At that time, Mr. Hawkins, how were you disposing of your lumber?

A. The Engineers were taking most of it.

Q. Who were the Engineers?

A. United States Army, Engineers Department.

Q. And how were they taking it? [49]

A. By their carriers from a designated area in our plant.

Q. And were you disposing of any otherwise?

A. Yes.

Q. How? A. By commercial steamship.

Q. Where would that lumber go?

A. That would go mostly to Alaska ports—Anchorage and Fairbanks—some to Seattle and Tacoma.

Q. Now, when the Engineers took it, who drove the carriers that picked it up at your yard?

A. The Engineers' drivers.

Q. They weren't hired or paid by you?

(Testimony of Eugene S. Hawkins.)

A. No.

Q. When it was shipped to Anchorage or Fairbanks, how would it be shipped; that is, what method of carrier?

A. Commercial carrier.

Q. By that you mean steamships?

A. Yes.

Q. Mr. Hawkins, when the steamer took it aboard, where did the steamer dock?

A. At our dock.

Q. And whose tackle would lift it aboard?

A. The steamship tackle.

Q. Now, who would attach the slings to this lumber which was going aboard? [50]

A. The longshoremen.

Q. By whom were they hired for that?

A. By the steamship company.

Mr. Andersen: I ask that answer be stricken. First, it is not the best evidence; and second, it is contrary to the opening statement of counsel. The records of this company would be the best evidence as to who hired those people—of either this company or the other company—it would be the best evidence. There is no showing this is the best evidence available. We say they were hired by this company and it paid the social security and all those charges. Now, I submit that the best evidence is available and should be produced.

Mr. Strayer: He is not talking about shipments by cannery tenders, but about commercial steamship operation.

(Testimony of Eugene S. Hawkins.)

The Court: You mean he misconstrued your opening statement?

Mr. Strayer: Yes.

Mr. Andersen: I still don't think it would be the best evidence. There are records in our possession that this company paid wages, social security and withholding tax on wages for the men doing this work. My basic objection is the best evidence—the pay roll records would be the best evidence.

The Court: You contend that it was the Juneau Spruce Corporation that paid the longshoremen and not the [51] Alaska Steamship Company?

Mr. Andersen: All the longshoremen—it is this, may it please the Court—that from the, all during the time they worked at that dock, where the Juneau Lumber or the Juneau Spruce hired them, they were paid in the same manner, by the same people occupying the premises, whether the Juneau Lumber or the Juneau Spruce. They both called them and paid them in the same way. They paid them in the same way for ten years.

The Court: I have forgotten whether it was the question or answer to which you objected.

Mr. Banfield: He objected on the ground of the best evidence. We have plenty of means of proving how and who paid them and hired them, etc. I would like to withdraw the question and ask this:

Q. Did you hire the longshoremen to attach the slings to the lumber going aboard commercial steam-

(Testimony of Eugene S. Hawkins.)

ers for shipment to the westward? A. No.

Mr. Andersen: Could I ask a question? Do I understand—do you mean whether the Company or this witness personally did it?

Mr. Banfield: The Company.

Mr. Andersen: All right.

Q. Did the Company hire the men to attach the slings to put [52] the lumber aboard commercial steamers for shipment to the westward?

A. No.

The Court: When you say the Company, perhaps you should say the plaintiff.

Mr. Banfield: All right. The plaintiff.

Q. Did the plaintiff pay these men?

A. No.

Q. Now, did you send shipments of Lumber to any other places except ports in Alaska by commercial steamer? A. Yes.

Q. Where did you sell that lumber?

A. At Seattle and Tacoma.

Q. And where did the commercial steamers dock to take that aboard? A. At our dock.

Q. And who transported the lumber to the face of the dock? A. Our yard employees.

Q. Now, these yard employees, what were their duties?

A. To transport lumber to the face of the dock for storage or shipment, or to and from our re-manufacturing plant.

Q. What did they do when they weren't doing that particular work?



(Testimony of Eugene S. Hawkins.)

A. They were stacking and unstacking lumber in the storage areas. [53]

Q. Did they have any other duties that you can think of?      A. No.

Q. Now, Mr. Hawkins, after it arrived at the face of the dock, who attached the slings to the lumber?

A. You mean on the commercial shipments?

Q. Yes.      A. The longshoremen.

The Court: Well, are you distinguishing now, or is this the same thing you asked about a moment ago? Are you distinguishing the shipments to the States from those made to Alaska ports?

Mr. Banfield: May it please the Court, they were handled in exactly the same fashion, except we haven't brought out before who did the dock work on shipments to the westward.

Q. Now, whose tackle hoisted it aboard the steamer?      A. Steamship tackle.

Q. Did the plaintiff hire the longshoremen for this work?      A. No.

Q. Who stored the lumber in the hold of the ship?      A. The longshoremen.

Q. And did the plaintiff hire the longshoremen for that work?      A. No.

Q. Did the plaintiff pay the longshoremen for either attaching the slings on the dock——

Mr. Andersen: This will be subject to the same objection.

Q. Or stowing it aboard?      A. No.



(Testimony of Eugene S. Hawkins.)

Q. Now, Mr. Hawkins, when you shipped to the westward, who did the work of bringing the lumber up to the bull rail or face of the dock?

A. Our yard employees.

Q. Were your yard employees hired just from time to time by the hour, or were they steady employees?

A. They were steady employees.

Q. Now, in this—going back to your conference that you had with the longshoremen at which Mr. Ford and Mr. Wheat were present in July of 1947, how much of this work did they claim that they wanted to do?

A. All that work.

Q. And did they contend that you were the employers as to stowing the lumber aboard the boats or attaching the slings?

Mr. Andersen: I object. Counsel said “contend.” What did they say?

Q. Did they say they wanted you to hire them on the boats?

Mr. Andersen: I object. I think he can ask the question without putting the words in the witness’ mouth.

The Court: It might be pretty difficult to direct his attention to this point without a suggesting or leading [55] question.

Mr. Andersen: Then all examinations would then be through leading questions.

The Court: Not all; but it is obvious in this case it might be. I am not saying it is. It might be difficult to direct his attention to the precise

(Testimony of Eugene S. Hawkins.)

point. If you can do that without leading or suggesting, you may of course do it.

Q. Did the longshoremen ask—did you hire them to do the work on the ships?

Mr. Andersen: I think I will object to that question. I think it is an exceedingly leading question. Why can't he say, what did the longshoremen state with respect to this work?

Mr. Banfield: All right.

Q. Did they state anything, Mr. Hawkins, with regard to attaching slings or working in the hold of vessels; was that the subject of conversation?

A. No.

Q. Now, who did you say that you would do regarding their demands?

A. We couldn't do anything regarding their demands.

Q. Did you state the reasons? A. Yes.

Q. What reasons did you give?

A. That we had agreed, after being shown that the I.W.A. [56] represented a majority of our employees, to consider them the exclusive bargaining agent, and were in the process of negotiating a workable agreement at that time.

Q. Did you give any other reason for this?

A. No.

Q. Now, at that time who was performing the work the longshoremen wanted?

A. Our yard employees.

(Testimony of Eugene S. Hawkins.)

Q. Would it necessitate discharging any of your yard employees if you were to hire longshoremen for that work?

Mr. Andersen: I object. It is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. Yes.

Q. How many yard employees did you have down there?

A. About eight.

Q. And how many shifts were you working?

A. We worked one shift part of the time and two shifts part of the time.

Q. And were there eight of each shift, or when you were working two shifts, or just eight each day?

A. When we were on a two-shift basis, we normally had more employees in the daytime than at night because they wasn't able to see, and there were other problems in that, and the day-shift employees did some of the night-shift [57] production work.

Q. In other words, would it be more or less, or more than eight when you were working two shifts?

A. Yes.

Q. And now, Mr. Hawkins, when did you have another meeting with any person representing either of the defendants in this case?

A. In August.

Q. About what time in August; do you know?

A. The very early part of August.

(Testimony of Eugene S. Hawkins.)

Q. And where was that meeting held?

A. In my office in the Juneau Spruce.

Q. And at whose request?

A. The fellow just came in the office and requested to talk to me at that same time.

Q. What was his name?

A. Verne Albright.

Q. Who did he represent himself to be?

A. He——

Mr. Andersen: I object as calling for a conclusion of the witness, may it please the Court.

The Court: Perhaps the question should be what he said.

Q. Yes. What did he say—who he represented?

A. He said he was a representative of the I.L.W.U. International. [58]

Q. Did he state where he lived?

A. Not as I recall.

Q. How long did you talk to Mr. Albright?

A. Quite some time; a couple of hours, I would say.

Q. Was it a friendly conversation; that is, a businesslike conversation; or was it antagonistic? What was the general feeling of the conference?

Mr. Andersen: I object. It should be what was said and done.

The Court: Unless you claim some materiality for the demeanor.

Mr. Banfield: Yes, we do your Honor. We wish to show Mr. Hawkins dealt with members of the

(Testimony of Eugene S. Hawkins.)

union on a business-like basis without antagonism or prejudice whatever, and we think—the conference was of considerable length, as testified—we should be able—we can't show just how he made every statement and every statement that was made in that period of time. We would like to show what the general atmosphere was of both sides.

Mr. Andersen: I think it must be assumed that people conduct themselves as pleasant people.

Mr. Banfield: There is no such presumption.

The Court: I think there is at least a presumption of fact that nothing untoward marked the discussion if it is [59] not brought out, and it doesn't appear to me of any importance or significance how he treated him at this stage of the case.

Mr. Banfield: May it please the Court, it was in the opening statement of Mr. Paul that the Juneau Spruce Corporation took a bitter and antagonistic attitude to the longshoremen and he went on a great length to show how he treated the longshoremen. We wish to show the contrary.

The Court: That may be, but it would be a proper subject to go over in rebuttal but not in your case in chief.

Mr. Banfield: Very well.

Q. Now, what did Mr. Albright say that he wanted?

A. To negotiate a coast-wise contract and also a local contract.

Q. And did he explain what he meant by a coast-

(Testimony of Eugene S. Hawkins.)

wise contract?           A. Yes.

Q. What did he explain that to be?

A. It was a general agreement which they had in effect up and down the coast, general provisions covering all the longshore work.

Q. Did he explain what he meant by a local agreement?           A. Yes.

Q. And what did he explain that to be?

A. That was an agreement taking care of special provisions peculiar to Juneau, as all ports had a little difference in some manner or other. [60]

Mr. Andersen: To which, may it please the Court, I assume, my same objection runs—no foundation and materiality in so far as the International is concerned, may it please the Court.

The Court: Yes; it is admitted subject to the same reservation.

Q. Mr. Hawkins, what did you say that you would do?

A. I went into some length to explain to him what had transpired in a previous meeting, the first meeting with the Local officials of the I.L.W.U., and we discussed the general thing for quite some time.

Q. But what did you say regarding your agreement or refusal to make these agreements which he wanted?

A. I reiterated my former statement that we couldn't bargain in good faith with the I.L.W.U. in



(Testimony of Eugene S. Hawkins.)

that we had already recognized the I.W.A. as the exclusive bargaining agent.

Q. What particular operations——

Mr. Andersen: Did you say “represented” or “recognized”?

The Court: “Recognized.”

Mr. Banfield: I think “recognized” as representative——

Mr. Andersen: He had his hand over his mouth, and I couldn’t very well hear him.

Q. Mr. Hawkins, speak loudly enough so we can all hear you. [61] Tell me, what work, particular operations, did Mr. Albright say he wanted to include under this contract?

The Court: Now, which? He spoke of two.

Q. Did he want to include the same work under both? A. He was talking for both.

Q. What work did he want to include?

A. All the work from the bull rail out which went on water-borne equipment, floating equipment.

Q. Now, did he ask you to take over and pay for this work which, you say, you didn’t pay for, such as attaching of slings and loading on commercial steamers?

Mr. Andersen: The question is suggestive, may it please the Court.

Mr. Banfield: I want to see if the arrangement of work he wanted——

The Court: Probably it would be preferable to ask him to explain what work Albright wanted

(Testimony of Eugene S. Hawkins.)

and, if he seems to have difficulty recalling any of it, you can remind him of it.

Q. What work did he wish to include under these contracts according to his own statements?

A. The same as I said. He wanted from the bull rail out for everything that went on floating equipment.

Q. Did he say anything regarding this other work in the yards which the longshoremen formerly had requested?

Mr. Andersen: I object. The question fully covered—— [62]

The Court: It seems to me his last answer would exclude that, wouldn't it?

Mr. Banfield: No, it wouldn't. I am asking now if he asked for this work which was requested before.

Q. Let me ask, was there any discussion by Mr. Albright in making statements regarding the work the longshoremen had asked you for in the previous meeting?

A. Yes.

Q. What did Mr. Albright say about it?

A. That was part of the lengthy discussion we had, and me telling him what had transpired before and what they wanted and the impracticality of it and we couldn't do it and such, and he said that

(Testimony of Eugene S. Hawkins.)

was asking too much and was unreasonable, that they didn't want that work and really only wanted to work from the bull rail out.

Q. Did they already have the work on the commercial steamers?           A. Yes.

Q. Was that through some other employer or someone else, or plaintiff company?

A. Through another employer.

Q. Now, what work was Mr. Albright referring to at this particular time as being work that he wanted to put under the contract?

A. That was loading of supplies, general supplies, for our logging camp, groceries and rigging of all kinds, and just [63] generally.

Q. And with what labor—that is, who had been doing this work loading supplies for the logging camp?           A. Our yard employees.

Q. Who would take it from the warehouses to the face of the dock?           A. Our yard employees.

Q. And who would operate the crane that would put it aboard?           A. Our employees.

Q. And who stored it aboard the boats?

A. Our employees.

Q. What boats would be used?

A. The tugboats that made regular trips to the camp and barges that were towed by them with the stuff aboard.

Q. Who owned these tugs and barges?

A. The Juneau Spruce Corporation.

(Testimony of Eugene S. Hawkins.)

Q. Was there any other work that Mr. Albright was referring to as coming under this contract, proposed contract? A. No.

Q. Was there any discussion at that time regarding the hiring of men to load fishing vessels and other people's small equipment? A. No.

Mr. Andersen: Pardon me. Are you still on the conversation with Mr. Albright? [64]

Mr. Banfield: That is the only one we have been talking about.

Mr. Andersen: I wanted to make certain.

Q. Did he mention that at all? A. No.

Q. Tell me, Mr. Hawkins, you have described your sales to the Engineers and sales shipped by commercial steamers; were there any other sales of merchandise or lumber made by the mill at this time? A. Yes.

Q. What were they?

A. Primarily fish boxes and some lumber.

Mr. Andersen: Could I interrupt just a moment? You are not now talking about any conversation with Mr. Albright?

Mr. Banfield: I am talking about the type of sales.

Mr. Andersen: Are you through with the conversation?

Mr. Banfield: No.

Mr. Andersen: I have difficulty following what he told Mr. Albright. It is difficult to follow the con-

(Testimony of Eugene S. Hawkins.)

versation. When there are continuous other references, it is difficult.

The Court: He is just leading up to something discussed in that conversation.

Mr. Andersen: That is fine. May I interrupt to suggest a narrative by reference—— [65]

Mr. Banfield: I will use any chronological order I please. But I am stating here and now I asked about the conference with Mr. Albright. Now, I said, “at this time,” meaning at the time of the conference with Mr. Albright, “was there any other method of selling lumber?” And he is telling us the method at that time.

The Court: You may proceed, and for counsel’s benefit you may indicate when you are through with this particular conversation.

Mr. Andersen: That would be helpful all around, your Honor.

Q. You stated, Mr. Hawkins, you sold principally fish boxes, but some lumber, to be delivered on these small boats?      A. Yes.

Q. Where did these small boats come from?

A. All over Southeastern Alaska—fish company cannery tenders and fish company boats.

Q. Was a great quantity or a small quantity of sales made that way?

A. A small quantity of sales.

Q. Who would own these various vessels?

A. Various fishing companies.

Q. How did they order the material?

(Testimony of Eugene S. Hawkins.)

A. We would receive the order by mail ordinarily requesting a specific number of boxes and how many pound boxes they [66] should be, and how they would have their boat and barge or boat at our dock at a specific date, and request that we arrange for the stowing of the cargo or boxes aboard their equipment.

Q. Now, when they would come to the dock, who would move the boxes to be shipped and the lumber up to the face of the dock?

A. Our employees.

Q. Who would operate the crane?

A. Our employees.

Q. And who would disengage the slings as they were placed on the small vessels?

A. The longshoremen.

Q. At what point in this delivery program did the transfer of this property take place from you, we will say, to the fishing company?

A. When it was landed on the fish company's vessel, it became their property.

Q. When shipping by commercial steamer, when did your obligation end and become the other man's property?

A. We were obligated to deliver lumber to within reach of the ship's tackle.

Q. You could summarize it — as long as the tackle was yours or it was handled by your tackle, you still owned it; and as long as it was handled by somebody else's tackle, somebody [67] else owned it?      A. That is right.



(Testimony of Eugene S. Hawkins.)

Q. Now, Mr. Hawkins, who would request these longshoremen to come to work? A. We did.

Q. By that you mean the employees of the Juneau Spruce would make the request?

A. Yes.

Q. Who would actually do it?

A. George Schmidt.

Q. And how would it be done?

A. He would call the hiring hall and advise them to have a certain number of employees come to our dock at a specified time for the purpose of stowing cargo.

Q. Would they—all those men—work on the dock or the crane? A. No.

Q. When they finished stowing cargo on the boat, who would pay them? A. We would.

Q. With your company check. A. Yes.

Q. And who would make out the social security return? A. We would.

Q. Who would make out the withholding?

A. We would. [68]

Q. Now, Mr. Hawkins, was there any agreement between yourself and the customers as to who was to pay for this work? A. Yes.

Mr. Andersen: I object. It is incompetent, irrelevant and immaterial as to who may have paid for it. Customers of course always pay for everything. I think we are only concerned here with the relations between the parties, and between this

(Testimony of Eugene S. Hawkins.)

and any third corporation I respectfully submit it is incompetent.

Mr. Banfield: If the Court please, this is a preliminary question to determine an agreement and and then to show exactly how it was done.

Mr. Andersen: I don't think we are interested in an agreement between this company and any other not directly or indirectly interested in this proceeding.

Mr. Banfield: If the Court please, we are entitled to show if we were acting as an agent or how we were acting and what the facts were.

The Court: In loading these small vessels?

Mr. Banfield: Sure.

The Court: Objection overruled.

Q. Was there an agreement between you and the customers?      A. Yes.

Q. What was the agreement?

A. That we would—— [69]

Mr. Andersen: Just a moment. I would like to ascertain whether the agreement was in writing. That would be the best evidence.

The Court: Yes.

Q. Was there any agreement in writing?

A. I don't know of it.

Mr. Andersen: I submit, if the witness doesn't know, the best evidence is valid.

The Court: Would it logically follow that because he doesn't know that it was in writing?

Mr. Andersen: The witness referred to an agree-

(Testimony of Eugene S. Hawkins.)

ment by the company, orally or in writing. This witness hasn't been connected with this company for better than a year. He says he doesn't know.

Mr. Banfield: If the Court please, we are still talking about August 1, 1947, at the time of the conference.

Mr. Andersen: He is no longer with the company probably.

The Court: But the question relates to the time he was in charge of the plant and was presumed to know.

Mr. Andersen: At that time, correct. But today he says he don't know whether it is or not. His recollection may not be what it was when he was with the company. If the agreement is in writing, they should produce it. We have a right to see it. It is the best evidence of its terms. [70]

The Court: The agreement doesn't apparently exist from what he says. Objection is overruled.

Q. Do you know of any agreement in writing?

A. No, I don't know of any specific agreement in writing.

Q. You were Manager there for thirteen months?

A. Yes.

Q. And at the period we are talking about?

A. Yes.

Q. Now, Mr. Hawkins, what was the arrangement under which you worked?

A. That we of course had a set price for our boxes or lumber, and the customer was billed for

(Testimony of Eugene S. Hawkins.)

that plus any other expenses the company incurred in his behalf, such as longshoring or any other expenses.

Q. Now, how many companies would you say you made deliveries to in this fashion?

A. Oh, I would say a dozen more or less; I don't recall how many; numerous.

Q. Did they always pay for this cost of longshoring in addition to the cost of materials?

A. Yes.

Q. Now, Mr. Hawkins, did longshoremen ever work for the Juneau Spruce Corporation on Juneau Spruce Corporation property? A. Yes.

Q. When was that?

A. Well, at one time the Whiz Packing Company and Engstrom were in dire need of fish boxes at Pelican City in a hurry. There was no commercial steamship to go in there for a considerable time in the future, and we chartered our tugboat to them to deliver as much boxes as it would hold to Pelican City for them.

Q. Do you remember about when that was?

A. That was about July.

Q. What year? A. 1947.

Q. And was it a considerable quantity of merchandise or a small quantity?

A. A considerable quantity; it was all the boat would hold.

Q. Who transported this material to the bull rail? A. Our employees.

(Testimony of Eugene S. Hawkins.)

Q. And who operated the crane?

A. Our employees.

Q. Who disengaged the slings on your boat?

A. The longshoremen.

Q. And who stowed it aboard the boat?

A. The longshoremen.

Q. How many longshoremen were employed, do you know?

A. I don't recall just how many were employed.

Q. One or two, or several? [72]

A. There were several.

Q. Who paid these longshoremen?

A. We did.

Q. And who made the social security and withholding returns?      A. We did.

Q. Was there any agreement as to who would pay for this longshoring, you or the customer?

Mr. Andersen: The some objection. It can't be binding on these defendants; that is, their relations with other people can't be binding on the defendants.

The Court: I don't think—except in a remote sense—it just shows the relationship between the longshoremen and the plaintiff. Objection is overruled.

Q. Mr. Hawkins, how were you paid on that instance for materials and longshoring and all services performed?

A. We sold them the boxes f.o.b. Juneau, and chartered the boat to them for a set fee which included the boat charter and longshoring and expenses incorporated in getting the boxes to Pelican City.

(Testimony of Eugene S. Hawkins.)

Q. Now, Mr. Hawkins, did you have any policy with respect to deciding what loading operations would be done by mill employees and which would be done by longshoremen? A. Yes.

Q. What was the policy?

A. That any work being done on our equipment, our cranes and [73] our carriers and our boats and barges and such, would be done by our employees, and any work being done on anyone else's equipment would be done by longshoremen.

Q. Now, why did you vary that practice here when you knew that your men—or that the longshoremen would be working aboard your boat?

A. Because that boat was chartered to this fishing company and that was their desire that longshoremen be employed to stow the boxes and so forth and equipment aboard.

Mr. Andersen: I move that be stricken. It is completely hearsay.

The Court: It doesn't appear to be hearsay.

Mr. Andersen: I submit, your Honor, it is hearsay.

The Court: Objection overruled. But what isn't clear to me is how that differed. Is it only with respect that in the one case the longshoremen handled the tackle from the bull rail, so called, to the deck of the vessel, and in the other they just merely unloaded it aboard the vessel?

Mr. Banfield: If the Court please, I think Mr. Hawkins has described where there were various



(Testimony of Eugene S. Hawkins.)

kinds of shipments—commercial shipments, company boats and on the barges of customers and small boats.

The Court: I understand that. But it isn't clear to me the difference in the method of handling as between their own equipment and the floating equipment of others. [74]

Mr. Banfield: If the Court wishes, I can trace out each particular type of shipment and then show where the property line was in pursuance. Is that what the Court means?

The Court: No. You prefaced this line of questioning or these questions on this particular point with the statement that the longshoremen worked on the plaintiff's property. Now, the answer that he gave seemed to be—the answer he gave in reference to loading their products aboard steamers and other vessels than this particular vessel that was chartered—except that in the one case the longshoremen took charge of the loading as well as the unloading, and in the other that——

Mr. Banfield: I don't think the Court is straight on that. The testimony has been—for instance, a commercial carrier—the mill hands brought it up to the bull rail, and there the product was delivered. The transfer of possession was delivered to the common carrier. The common carrier hired men to take it and attach the slings, put it aboard the vessel and put it in the hold; that the Juneau Spruce was done with it when it was put at

(Testimony of Eugene S. Hawkins.)

the last place it was to be on their property. The carrier was employing the tackle and the men to hoist it aboard. Now, when a shipment went south, the same procedure was handled. When a shipment went to their logging camp, their own material was going to their own camp on their own boat. The mill hands brought it to the dock, operated the [75] crane and set it on the company's boats and barges, stowed it aboard, and it went to the logging camp. The property was owned all the way through by the lumber company. The lift trucks and slings, all the equipment was the company's, and it was done by their employees. But when a customer came with their equipment, the company brought it to the face of the dock. The company crane and company employees dropped it aboard the vessel, and there, he says, the ownership of the boxes changed hands because it was delivered on the property of somebody else, and at that point longshoremen were hired to handle it. Now, he testified in this one particular instance, when a shipment was going to Pelican, the mill employees brought it to the face of the dock, operated the crane and set it down on their own boat. It varies from the usual practice because the boat was under charter to Mr. Engstrom, the Whiz Fish Company, and that work ordinarily was done by longshoremen, and longshoremen were hired. I think that is a summary.

The Court: It could be said the method varied when the floating equipment was plaintiff's own and when it wasn't.

(Testimony of Eugene S. Hawkins.)

Mr. Banfield: That is right; and when the tackle used, if it was ship's tackle, there was a difference in employment than when the company's crane was used. If the Court please, Mr. Strayer calls my attention to a slight mistake I made. When the property is being delivered for the use of the company crane, the mill employees always use the crane to [76] operate it and set the equipment aboard the floating equipment. If the floating equipment is company equipment, then it is stowed aboard by company employees, regular employees. If it is stowed aboard somebody else's vessel, like delivery to a commercial fish company, longshoremen were employed and they stowed it. And it is just a case of whose property it is that determines what kind of employees are used.

Q. Is that a correct statement, Mr. Hawkins?

A. Yes.

Q. Mr. Hawkins, was there ever any time when someone else hired longshoremen to come aboard your equipment? A. Yes.

Q. What was that?

A. We were expanding our logging facilities and had shipped up on a commercial carrier a tractor and a big donkey and big spools of cable and other big equipment, and at the request of the agent of the steamship company we placed our barge alongside the ship so this equipment could be unloaded onto our barge rather than the dock, in as much as the trucks were not of sufficient strength

(Testimony of Eugene S. Hawkins.)

to move the equipment about when they would get it off, so they employed longshoremen to take the slings off the equipment after it was unloaded on our barge. When this operation was completed, our tug moved the barge to our dock, and our yard employees lashed it down and made it fast for [77] shipment to our logging camp.

Q. According to that, that is a case when longshoremen worked aboard your equipment?

A. That is right.

Mr. Andersen: I object. There is no necessity for counsel to make a summation of evidence.

The Court: It is not improper to embody what has already been said for the purpose of clarity.

Q. Was there any time other than the delivery to these small boats when you might pay some longshoremen for some particular service?

A. Yes.

Q. What was that?

A. That would be some instances when we had a shipment of lumber and the boat was, we will say, at the Alaska Steamship Dock and had discharged its cargo there, and rather than transport our lumber to that dock for loading we would ask the steamship company to move their vessel to our dock for loading of this lumber. Then we would pay the tie-up charges of the longshoremen to tie-up to our dock.

Q. When they were tying up to the dock, whose hawsers or tie-up would they be using?

(Testimony of Eugene S. Hawkins.)

A. The steamship company's.

Q. And they would come aboard your dock for what purpose? [78]

A. To attach these hawsers to the piling and tie-up facilities there.

Q. Was there any agreement between yourself and the steamship company as to who would pay for that extra service of moving the vessel?

A. Yes.

Q. Who? A. We were to pay for that.

Q. You were to pay the longshoremen for that?

A. Yes.

Q. Do you know how many longshoremen were hired to tie-up a vessel? A. I think two.

Q. Do you know how much was charged?

A. I believe it is two hours, or either one hour or two hours. I am not quite positive.

Q. In other words, a somewhat incidental charge for moving the vessel? A. Yes.

Q. Is that all the work that longshoremen ever did that appeared on your payrolls and your checks? A. Yes.

Q. And summarizing, is it correct to state that would simply consist of the work of delivering fish boxes and incidental lumber and materials to small boats at your dock—that [79] is, vessels owned by somebody else—and these tie-up charges?

A. Yes.

Q. Now, going back to your conversation with Mr. Albright on or about August 1st, how did the



(Testimony of Eugene S. Hawkins.)

conversation end—that is, what was the agreement between the parties; what did you say to each other?

A. Mr. Albright stated that he would contact the mill—I.W.A. officials—and see if he couldn't get them to agree to work it out so we could sign a contract also with the longshoremen and the I.W.A.

Q. Did you say anything, what you would do if he were successful?      A. Yes.

Q. What did you say?

A. That, were the agreement such, we could do nothing else but that. It would be agreeable.

Q. If it was agreeable with the I.W.A.?

A. Yes.

Q. After this conversation with Mr. Albright, did he ever come back to see you again?

A. No, he never did.

Q. Did the longshoremen's committee of the Local ever come back to see you again?      A. Yes.

Q. When?      A. October 23rd.

Q. How do you happen to remember that particular day?

A. That was the day Mr. Card and I both arrived back from the States. I was down on a business trip and I requested Mr. Card to come back with me to assist in the signing of the I.W.A. contract that we were working on all summer and had finally gotten to a satisfactory agreement to all parties worked up.



(Testimony of Eugene S. Hawkins.)

Q. On October 23rd who was present at the conference?

A. Mr. Card and myself and Mr. Wheat and Mr. McCammon, I believe.

Q. And what—who did they say they represented—that is, Mr. Wheat and Mr. McCammon?

A. They represented a committee from the I.L.W.U., Local 16.

Q. What did they say they were there for?

A. To negotiate a contract for the work from the bull rail out.

Q. Now, at that time what work was being performed on the dock—I might ask you, was the same work you described during the Albright conversation, that was the practice then, was all that work being carried on, all those different types of loading?

A. Yes.

Q. How about the Army Engineers? [81]

A. That had discontinued then.

Q. How “discontinued”?

A. That is, in September they canceled the balance of their contract and ceased to accept delivery of any more lumber.

Q. Did that make any difference in the amounts or quantities you would have to sell to others?

A. Yes.

Q. What did you do when that occurred, and prior to October 23rd, to change the pattern of deliveries?

A. Immediately upon being notified of that de-

(Testimony of Eugene S. Hawkins.)

cision we started the instigation of barge transportation to Rupert and Tacoma.

Q. And tell me what you did in order to get ready for that operation?

A. We changed a lot of the mill around for lumber segregation and chartered and leased barges and purchased a new tugboat.

Q. Anything with respect to storage area?

A. Yes. We filled in additional storage area there that was, prior to that was useless; bought some more property, tore buildings off of it, moved buildings; and made available every foot of storage area we could in order to accumulate these customers' orders in lots preparatory to barge shipment.

Q. Were you still making all your deliveries, Mr. Hawkins, [82] by receiving an order and making up specific orders and then shipping it?

A. Yes.

Q. Was that necessary?

A. That was absolutely necessary.

Q. In other words, you couldn't take all the lumber and ship it some place and then get rid of it?

A. That is true. At this time that the Engineers stopped buying, it created a surplus so the only lumber sold and moved was lumber sold on definite order and manufactured to the customer's specification individually.

Q. Did it make any difference in the price to dispose of it that way?

(Testimony of Eugene S. Hawkins.)

A. It was considerably more that way than if we just arbitrarily manufactured lumber and sent it below in the hopes of selling it to some one in that form.

Q. When you got these barges, Mr. Hawkins, how big were they?

A. One was 110 feet long, and one was longer, and one was a B.C.L. type—two was.

Q. What is a B.C.L. type?

A. That is a shipshape barge instead of being square. It is like a ship but has no superstructure on it.

Q. How much lumber will it hold?

A. Upwards to a million and a quarter feet.

Q. How much lumber did you produce a day down there?

A. In excess of 200,000 a day.

Q. And now, Mr. Hawkins, had you started this barge loading operation at the time Mr. McCammon and Mr. Wheat came to see you on October 23rd?

A. We had just completed loading a barge.

Q. I would like to have you tell the jury how you went about loading one of these barges, with particular emphasis to the time it would take and the arrangement of the work and so forth.

A. Well, the first barge was a small one in the first place, and the orders we had to fill—we took out all the lumber which was stored from our main mill, in the storage area, put it through the re-

(Testimony of Eugene S. Hawkins.)

manufacturing plant and manufactured it to the customer's specification, and put it near our crane on the face of the dock. Now, some days we would accumulate a lot, and some days it would be three or four lots.

Q. What is a lot?

A. A lot is one carload of lumber, approximately 25,000 feet and that just fills one boxcar.

Q. Thank you. Go ahead.

A. And there was an order given this lot and a paint daub assigned to it and, when it was manufactured, when it got to 25,000 feet and was finished, the yard employees would load [84] this lot aboard the barge and until the barge was loaded.

Q. Would this loading operation be a continuous proposition?           A. No.

Q. What would the men be doing the rest of the time?

A. They would be taking it to the manufacturing plant, and it would be taken from the plant to the face of the dock, strapping it, marking it and painting a daub on it, and tallying and stacking for a lot accumulation, and just that type of work.

Q. Now, how long would it take to accumulate enough lots to fill a barge?

A. Well, I believe on that particular barge it was better than a week to accumulate enough for it.

Q. If this barge was used for a week, it would necessarily constitute a storage area, would it not?

(Testimony of Eugene S. Hawkins.)

A. Yes.

Q. Was that one of the objects of using barges?

A. That was a factor in our original plans in that the area adjacent to the mill was very limited and by so using a barge we would be able to increase our storage area materially and segregation area.

Q. Was there any other reason for using a barge?

A. It was a far cheaper operation than the commercial steamship.

Q. Did you continue to ship any by commercial steamship? [85]

A. Yes. We shipped rush orders and high-priced orders that would give us enough margin to work on to ship by commercial steamship.

Q. Had your idea of the barges and cheaper operation have any significance in your future plans?

A. Yes. It was apparent that very shortly the market would be much lower because of the lack of the Engineers buying the lumber and the economic situation all over the world, as a matter of fact, for exporting which would bring the price of lumber down, and we would then have already instigated and have in motion a cheaper facilities for the movement of our lumber, the barges and tugboats and things set up to operate when this would come about.

Q. Have subsequent events proved that correct?



(Testimony of Eugene S. Hawkins.)

A. Perfectly correct.

Mr. Andersen: I object to that.

The Court: It is immaterial.

Q. Now, Mr. Hawkins, going back to your conversation now with Mr. Wheat and Mr. McCammon and Mr. Card, what was said at that meeting by the parties? This, incidentally, was October 23rd, the meeting of October 23, 1947.

A. In the first place I had requested Mr. Card to assist me in the labor management negotiations here and I requested that he be the principal speaker and take care of this meeting that we had on and why we were sitting there, and [86] what little I added along with it, I can relate.

Q. All right. Relate what the longshoremen said they wanted.

A. The longshoremen said they wanted again all the work from the bull rail out plus the barge loading. We had just completed loading then, and we had used our employees at it, and they requested that work.

Q. Did they say anything about an agreement?

A. And they wanted this agreement signed up for this purpose to include all that.

Q. Did they say who would be parties to that agreement?

A. Yes. The I.L.W.U. 1-16 and the Juneau Spruce Corporation.

Q. What was said by the Company representatives?



(Testimony of Eugene S. Hawkins.)

A. That we had recognized the I.W.A. as the exclusive bargaining agent; they had shown us their signatures and verified the fact they were representative of a majority of the employees; and that we had during the summer months negotiated a contract agreeable between both parties and were in the process of signing it then; and, in view of that, we couldn't bargain with their union.

Q. Now, was that the sum and substance of that part of the subject?           A. Yes.

Q. Was there anything else said at the end of the conversation regarding any particular job on the dock or any particular work that had been done? [87]           A. No.

Q. Do you remember, Mr. Hawkins, something about carrier blocks?

A. Oh, yes. That was the outset of—I should say, the tail end of what had transpired during my absence.

Q. Just say what was said then.

A. What was said then was that they wanted us to employ two longshoremen and a boss to remove the carrier blocks after our lumber had been taken off these blocks and put on the commercial steamship.

Q. Mr. Hawkins, tell us this—what is a carrier block; and what is a carrier, first?

A. A carrier is a piece of equipment that straddles a package of lumber, raises and transports it from one place to the other.

(Testimony of Eugene S. Hawkins.)

Q. Those big yellow machines we see running around here? A. Yes.

Q. What are the blocks?

A. The blocks are a specially built piece of wood that the lumber sits on and makes the carrier able to hook on and thereby raise this package of lumber and keeps the edges clear from the ground so it don't get hooks in them.

Q. Were these carrier blocks used when you delivered to commercial steamers at your dock?

A. Yes. [88]

Q. Tell me what happened to the blocks in the process of delivering it to the bull rail.

A. It would be underneath the package of lumber until it got to the bull rail and, when the lumber was lifted off, it would be left sitting on the dock.

Q. The lumber carrier and lumber and blocks would go to the bull rail, and the carrier would just drop it and go away? A. Yes.

Q. And the longshoremen would hoist it aboard the steamer? A. Yes.

Q. Did you or the Juneau Spruce Corporation hire the longshoremen to attach the sling and hoist it aboard the steamer? A. No.

Q. That would leave the carrier block sitting there; is that true? A. Yes.

Q. What was it they were referring to when they spoke about these carrier blocks, what work in connection with it?

A. In order to make room for the carrier to deliver another load there, these carrier blocks had

(Testimony of Eugene S. Hawkins.)

to be removed from that particular spot and stacked up and, when there got to be a lot, the carrier would take them back to the mill yard for other lots.

Q. How much do carrier blocks weigh? [89]

A. Maybe 15 pounds.

Q. 15 pounds? A. Yes.

Q. What work did they want with respect to those blocks?

A. They wanted the job of stacking them up preparatory to making a package of them for the carrier.

Q. Were these slingmen hired by the steamship company there? A. Yes.

Q. And they wanted two more men to lift the blocks aside? A. Yes.

Q. What had been done prior to that time regarding carrier block men?

A. When it was lifted off, there was nothing to do but stand and wait so they picked them up themselves and threwed them over in a pile.

Q. They wanted two men to lift a 15-pound block and put them in a pile? A. Yes.

Q. What was said at the meeting regarding carrier block men?

A. They had sent down some men to do this work on their own accord and at this meeting they wanted to know if we were going to pay them for it. We said, in as much as we never ordered the men to come down and never requested it and they

(Testimony of Eugene S. Hawkins.)

sent men down to do work we had not assigned, that we would not pay the men for it. [90]

Q. Was that the end of the conference?

A. Yes.

Q. Did they make any remark after you had informed them of it?

A. That they would see about who would pay what.

Q. That they would see about who paid for what? A. Yes.

Q. Was there any other conference with any other labor union that day? Just a minute—going back—I will withdraw that last question—to the conference of the 23rd; was there any discussion or any statements made by either side as to whether or not there were any longshoremen employed there then? A. No. There was——

Mr. Andersen: I submit that answered the question. The question was asked and answered, may it please the Court. He said, “No.”

The Court: Yes.

Q. Calling your attention particularly to Mr. Card, did he question anybody there as to longshoremen, whether they were being employed by the company or not? A. Yes.

Q. He was new here, was he not? A. Yes.

Q. Who did he ask, and what did he ask? [91]

A. He asked the representatives of 1-16 if they represented any of our employees, and they said, “No.”

(Testimony of Eugene S. Hawkins.)

Q. That is all. Now, did you have any other meeting with any other union committee?

A. Because of that situation being brought up, we requested a meeting with the shop committee of the I.W.A. immediately after closing time that night.

The Court: Before we go into that, I think it is time to adjourn. This seems to be a good place. Ladies and gentlemen of the jury, you are again admonished not to talk about this case with anybody, nor among yourselves, nor to permit anybody to talk to you about it and, if anyone should attempt to talk to you about the case, you should immediately warn him you are on the jury and, if he persists, you should report the matter immediately to the Court. You are also not to arrive at any opinion or express any opinion until the case is finally submitted to you for your deliberation. I also deem it necessary that you refrain from reading newspapers regarding this case or any related case. Your decision or verdict in this case will have to be arrived at from the evidence that is produced here before you and the law as given to you by the Court, and you should refrain from reading anything that might influence you in any manner.

(Whereupon, the case was adjourned until 10:00 o'clock a.m., May 2, 1949, reconvening as per adjournment, with all [92] parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)



(Testimony of Eugene S. Hawkins.)

Mr. Strayer: If the Court please, may I ask counsel for defendants if they have the records we discussed yesterday?

Mr. Andersen: No.

(Whereupon, the witness Eugene S. Hawkins resumed the witness stand and the Direct Examination by Mr. Banfield was continued as follows:)

Q. Mr. Hawkins, last Friday you finished your testifying, stating there had been a meeting on October 23, 1947, with the committee from the long-shoremen's Local 16. Now, on that same date did you have a conference with any other union committee? A. Yes.

Q. Tell me who was present at that conference.

A. For the I.W.A. Tim O'Day and Glen Kirkham.

Q. Were there any other representatives for plaintiff? A. And Gene Card.

Q. Who is Gene Card?

A. A Personnel Manager of the Coos Bay Lumber Company and Labor Management Adviser to the Juneau Spruce Corporation.

Q. Will you tell us what was said at that meeting? A. That meeting was held——

Mr. Andersen: May it be noted that the same objection [93] is made as hertofore, immaterial and hearsay and incompetent so far as the defendants are concerned?



(Testimony of Eugene S. Hawkins.)

The Court: The record may so show, and the same ruling.

A. In the afternoon; that was in the evening, of the same day, we had the meeting with the long-shoremen at which the question of barge loading was brought up. And Mr. Card and myself had requested this meeting with the I.W.A. for the purpose of asking them if they included barge loading in their work, and we were advised that they did but that to be sure of everything they would send a wire to their International and request their authority on it.

Q. At that time was there a barge being loaded?

A. We had just completed loading the first barge.

Q. And at that time were there any negotiations regarding a contract with the I.W.A.?

A. As a matter of fact at that time we had completed the agreement on this contract.

Mr. Andersen: I move that be stricken as an opinion of the witness.

The Court: Objection overruled.

Q. Mr. Hawkins, are you now speaking about Plaintiff's Exhibit No. 2 as the agreement which you completed?

A. Yes; this is the one which we completed.

Q. What is the date of that agreement? [94]

A. November 3, 1947.

Q. Were the terms of this agreement agreed to at the meeting of October 23rd, or was it agreed to with certain exceptions; tell us to what extent—

(Testimony of Eugene S. Hawkins.)

Mr. Andersen: May the same objection run to this line of questioning, without objecting to each question?

The Court: Yes. It should be shown whether Plaintiff's Exhibit 2 embodies the entire agreement arrived at from earlier meetings.

Mr. Banfield: I will withdraw the previous question.

Q. Does the Plaintiff's Exhibit 2 embody the terms of the agreement arrived at October 23rd, or were there some exceptions or differences?

A. The agreement had been agreed upon prior to October 23rd.

Q. Completely in all its phases?

A. Yes; the only exception being that the I.W.A. though desired to send the agreed-upon agreement to their International for ratification and return for signing, and which was done. It was brought back on the 3rd of November. Had it not been for that, it would have been signed earlier.

Q. In this Agreement of November 3rd it is stated that: "The Union is hereby recognized as the sole and exclusive collective bargaining agent for all the employees of the Employer in its saw-mill, manufacturing and retail departments at Juneau, Alaska, excluding superintendents, foremen [95] and office employees, on all matters pertaining to wages, hours of labor and other conditions of employment in the aforesaid plant, subject to the provisions of Article II as provided in this

(Testimony of Eugene S. Hawkins.)

Agreement." Article II is that dealings would be through a Plant Committee, the Shop Committee. Was that particular provision of that contract discussed at the meeting of October 23rd?

A. Yes.

Q. What was said regarding it?

A. Since it was agreeable with all concerned that the I.W.A. include barge loading in their scope of the processing of lumber, it was thought it should be included—barge loading—in that paragraph; and if that being the case, we felt we would also have to include machine-shop and powerhouse employees and departments—we were expanding still at that time—and we would have to leave provisions for new departments and exclude departments we ceased to use, and it would be a quite lengthy matter. Rather than go through this process, we thought to use the language in there of all employees, then it would include everyone employed by the Juneau Spruce Corporation.

Q. You mean everyone employed, or were there any exceptions, being any exceptions to those employed—I believe you testified before regarding people away from Juneau?

A. That would be the exception—of our boats and logging camp. [96]

Q. In other words, you mean to imply it would be the entire personnel of Juneau? A. Yes.

Q. Now, after this meeting did the I.W.A. present the contract for any purpose?

(Testimony of Eugene S. Hawkins.)

A. For signing only.

Q. And when was that?

A. On November 3rd. I wasn't present at the signing.

Q. Did you leave authority for someone to sign on your behalf? A. Yes.

Q. And was it actually signed on behalf of the Juneau Spruce Corporation? A. Yes.

Q. By whom? A. Gene Card.

Q. Was there any subsequent barge loading in 1947? A. Yes.

Q. What did that consist of?

A. We loaded a barge out in—I think probably several barges. I just don't remember how many it was; consisting mainly of clears and shops.

Q. What do you mean by "clears"?

A. That is the better grade of lumber, the higher priced lumber. [97]

Q. Why do you call it "clears"?

A. It is lumber free of knots or materially so.

Q. What do you refer to as "shops"?

A. Shop type lumber is used in manufacturing of furniture and doors and windows. It has knots in it but so spaced as to leave clear cutting between the knots.

Q. Is that poor quality or good quality?

A. The second most expensive type of lumber.

Q. Who loaded these barges that went out with this type of lumber in 1947?

A. Our mill employees.

(Testimony of Eugene S. Hawkins.)

Q. Did they move it up to the face of the dock?

A. Yes.

Q. Who operated the crane?

A. Our yard employees.

Q. And who stowed it aboard the barges?

A. Our yard employees.

Q. Were there any members of Local 16 employed or who worked at the Juneau Spruce Corporation on the plant or property after this meeting of October 23rd?      A. No.

Q. Does that hold good as long as you were there as Manager?      A. Yes.

Q. Was there ever any further discussion that year with the I.W.A. as to their doing this work?

A. No.

Q. Now, in 1948—first—I will withdraw that. First, was there any other meeting with the I.L.W.U., Local 16, or any representatives on their behalf during 1947?      A. No.

Q. When was the next meeting.

A. In April of 1948.

Q. In April?      A. Yes.

Q. How long would that be before the strike or the picket line?

Mr. Andersen: I object. I move to strike the word "strike."

Mr. Banfield: I will withdraw the question.

Q. How long before the picket line was established did you have a meeting with the I.L.W.U.?

A. One day.

Q. Mr. Hawkins, I would like to ask you if



(Testimony of Eugene S. Hawkins.)

there wasn't some other meeting between October 23rd and the date the picket line was established?

A. Yes. It was a little earlier than that.

Q. What month would you say?

A. The latter part of the month prior.

Q. In March? A. Yes. [99]

Q. Who was present at that meeting?

A. Mr. McCammon; Mr. Ellis.

Q. Who was Mr. McCammon now?

A. Of the I.L.W.U., Local 1-16.

Q. Who was Mr. Ellis?

A. State Steamship Company.

Q. Was Mr. Ellis here—for what purpose was he at this meeting?

A. I had requested that he come up to assist us with the barge operation, and loading and unloading techniques, and so on.

Q. Did you ask him to be present at this meeting? A. Yes.

Q. Was there anyone else present besides Mr. Ellis and Mr. McCammon and yourself?

A. Mr. Stamm; and two other longshoremen—Mr. Wheat, I believe; I don't recall the third one right now.

Q. Do you remember Mr. McCammon at this particular meeting definitely?

A. We had quite a few meetings right in a short time there. I believe he was there, but I wouldn't be positive. There were three representatives of Local 1-16 there.



(Testimony of Eugene S. Hawkins.)

Q. Did they say they represented Local 1-16?

A. Yes.

Q. What occurred at this meeting with Mr. Ellis? [100]

A. They asked if we were of the same opinion regarding barge loading as we had stated previously, and I replied, yes, we were.

Q. Was there any discussion at that time regarding signing a contract?

A. No; that wasn't mentioned.

Q. Now, when they said "previous" meeting, what did they mean? What did you take that to mean?

Mr. Andersen: That calls for a conclusion of the witness, may it please the Court, unless there was some discussion about it.

The Court: Yes. You can ask him when the previous meeting was.

Q. What previous meeting was referred to?

A. Whereby they asked for the signing of a contract, both coastwise and local, for the work of handling our products from the bull rail out.

Q. What was your reply to this proposal—request?

A. That we had recognized the I.L.W.A. as exclusive bargaining agent, and thereby couldn't bargain with any other union for that work.

Q. I think in your statement there you said you told them you had made an agreement with the I.L.W.A.; what do you mean?

(Testimony of Eugene S. Hawkins.)

A. I.W.A. I got the wrong letter in there.

Q. You mean Local M-271? [101]

A. Yes.

Q. In other words, it constituted a refusal on the part of this Local to give them the work?

A. Yes.

Q. Was anything further said at that meeting, or was that the end of it?

A. As they went out the door they remarked, "We will see whether or not" we would talk with them about it in the future.

Q. Between this meeting on October 23rd and the meeting in late March had the mill operated all the time? A. No.

Q. Tell us why not and for what period.

A. It was down from about the 21st or 22nd of December until about the 1st of March for repairs and because of the snow and etc.

Q. By being "down" you mean the mill was closed and no lumber was being produced?

A. Yes.

Q. Did it operate continuously after the 1st of March?

A. No. We started up and there come another big snow. We shut down for another two weeks and then reopened.

Q. At the time they asked for this meeting or came to see you in March, was the mill operating?

A. No, I don't believe it was. [102]

Q. Were you loading a barge at that time?

A. Yes.

(Testimony of Eugene S. Hawkins.)

Q. Now, tell me when was the next meeting after this one in March?

Mr. Andersen: With whom?

Q. With anyone; any union?

A. It would be very shortly before the picket line was put on, one or two days; I don't recall.

Q. What was the date the picket line was put up?

A. The 10th day of April.

Q. Who was present at this meeting one or two days before April 10th?

A. Mr. Banfield, Mr. Stamm, and I.L.W.U. representatives.

Mr. Andersen: I am going to object to that.

A. Mr. McCammon, I am sure, was one.

Mr. Andersen: I object to the conclusion of the witness as to the I.L.W.U. unless they designated——

Mr. Banfield: We will show that.

Mr. Andersen: It may be stricken then, I assume?

The Court: I think he can state it now. You can cross-examine him on it. Objection is overruled.

Q. Do you remember the names of the I.L.W.U. representatives?

Mr. Andersen: I assume you mean I.L.W.U., Local 16, representatives?

Q. Yes. Local 16 representatives? [103]

A. Mr. Wheat and Mr. McCammon.

Q. Let me ask you, Mr. Hawkins, did Mr. Wheat

(Testimony of Eugene S. Hawkins.)

continue in these final negotiations, do you know?

A. No, I don't know. As I have stated previously, we had quite a bit of confusion at the time, and I am not very good at remembering names, and I wouldn't want to be positive at all times of the names.

Q. Mr. Joe Guy was present at any of these meetings?

A. Yes, he did. That is the one I couldn't think of a while ago.

The Court: Which? He said, "a moment ago."

Mr. Banfield: I said either of these meetings.

Q. You said you were referring to a "while ago"; what meeting was it Mr. Guy attended?

A. He attended the last two meetings.

Q. The last two. Do you know Mr. Pearson?

A. Yes.

Q. Did he attend any meetings?

A. Yes, he did.

Q. What did he attend?

A. He was at the last two meetings also.

The Court: That is instead of who now?

Q. Are you sure Mr. Wheat was at the last two meetings? A. No, I am not.

Q. Could he have been there? [104]

Mr. Andersen: I object, may it please the Court.

Q. Or are you certain?

Mr. Andersen: Did the Court rule on my objection?

The Court: Objection overruled.

(Testimony of Eugene S. Hawkins.)

A. Now that the names are brought up again, I know there were only three, and I do know Mr. Guy was there and Mr. Pearson.

Q. Are you sure about who the other one was?

A. I would know his name again. I said it a minute ago and forgot it again.

The Court: Do you mean McCammon?

A. McCammon; yes.

Q. Were those persons present at both the last two meetings? A. Yes.

Q. Who are those three men?

A. They said they were the Shop Committee and officers of the I.L.W.U. 1-16.

The Court: This Union has been referred to as 1-16 repeatedly. I understand it is 16.

Mr. Andersen: It is interchangeable, I think.

Mr. Banfield: It was explained that it was District 1 of the I.L.W.U.; and at one time there were other districts, but for several years that has been the only district in the I.L.W.U. They dropped the one. It is just Local 16. Local 42 was so affiliated that it had different districts; and it [105] was prefaced by "1." It is interchangeable.

The Court: It still wouldn't be the number, would it—referring to the district?

Mr. Andersen: We will stipulate—1-16 or 16—it means this Union in Juneau, your Honor. Isn't that correct, Mr. Banfield?

The Court: Very well.

Mr. Banfield: Correct.



(Testimony of Eugene S. Hawkins.)

Q. Now, Mr. Hawkins, what took place at this meeting just before April 10th?

A. The longshoremen and I.W.A. officers at that time came in to stipulate that they were placing a picket line at our plant and that the I.W.A. employees would not go through the line.

Q. You said two groups came in to stipulate. What do you mean? Who was putting the picket line on? One or both?

A. The longshoremen were putting the picket line there.

Q. What did the I.W.A. tell you at this meeting?

A. That they, being a union, would have to recognize the picket line.

Q. Did they give you any reasons why they would have to recognize it?

A. Yes. They said that for peace sake, etc., they had agreed to give that work to the longshoremen at that time.

Q. Was the mill operating at that time? [106]

A. Yes.

Q. Did the I.W.A. tell you how they had arrived at this decision or what action had been taken to make this decision?

Mr. Andersen: Could I interrupt? A better foundation should be laid so far as persons present, are concerned. Was it the meeting at which Mr. Banfield was present, and Mr. McCammon was present, Joe Guy was present, and Mr. Pearson was present? There was no reference to any representative of the I.W.A. I assume it is the same meeting.



(Testimony of Eugene S. Hawkins.)

The Court: The reference was to a committee of the I.W.A. No names were specified. You wish the names?

Mr. Andersen: Yes, your Honor.

Q. Who was present there representing the I.W.A.?

A. Mr. Peterson was spokesman for the representatives.

Q. Do you know whether or not he was an officer of the I.W.A.?

A. He was Secretary, I believe he said.

Q. Do you know who the other I.W.A. men were?

A. There was one fellow—oh, I forgot his name; another was Big Tim O'Day.

Q. Did they tell you how this decision was arrived at?        A. Yes.

Mr. Andersen: The same objection as to hearsay, may it please the Court, particularly so far as the International is concerned.

The Court: Is it very material how they arrived at [107] it? After all it seems to me the important thing is that it was arrived at, and not the process by which it was arrived at.

Mr. Banfield: I think the Court is right.

Q. Did they state at this meeting anything they would do after this meeting other than recognize this picket line?        A. No; I don't recall.

Q. What happened on April the 10th?

A. The longshoremen placed a picket line at the entrances of our plant.

(Testimony of Eugene S. Hawkins.)

Q. How many pickets were there?

A. Four.

Q. Where were they placed?

A. One at the main entrance and one at another entrance in the vicinity of our power plant and machine shop; two in each place.

Q. Did they carry any signs? A. Yes.

Q. Was there anything on the signs?

A. Yes.

Q. What was on it?

A. At the top was, "I.L.W.U., Local 16, locked out by Juneau Spruce Corporation."

Q. And how long did the pickets remain at both places? A. Just a few days. [108]

Q. And after that were there still pickets there?

A. At the main entrance; yes.

Q. How long did they stay at the main entrance of the plant? A. They are still there.

Q. Were they there all the time that you were manager of the plant? A. Yes.

Q. How many hours a day did they picket?

A. Twenty-four.

Q. Now, at the time that this picket line was established, what was your intention with respect to operating the mill—that is, the extent of the operation that you intended to carry on?

A. Up to that time, since the inception of the company, we had been gradually getting our equipment and lines of supply in shape to efficiently saw and handle 50,000,000 feet for the year of 1948.

(Testimony of Eugene S. Hawkins.)

Q. Would that be 50,000,000 feet of logs or 50,000,000 feet of lumber?

A. That would be 50,000,000 feet of lumber.

Q. Mr. Hawkins, what preparations had you made within the mill itself?

A. We had to lengthen the green chain to facilitate sorting. We acquired more storage space, and things too numerous to mention. [109]

Q. What had you done regarding the log supply?

A. We had—by that time we had completed our logging camp installation. All the equipment was there. The logging road was built. And our own operation was put out 25,000,000 that year. Our government contract specified a minimum of 20,000,000 feet. And we had assisted financially at other points numerous gyppo-loggers—or contract loggers, maybe should be the term—to produce for us, whose aggregate amount would have been considerably more than 25,000,000.

Q. In other words, you mean you would have a supply of 50,000,000 feet for 1948?      A. Yes.

Mr. Andersen: I object to that. That is the best potential, according to the witness. I think it is leading and suggestive on the part of counsel. I move it be stricken.

The Court: I think it embodies what has already been testified to. Objection overruled.

Q. Mr. Hawkins, how would the grade of this lumber in 1948 run as compared to the grade in 1947?

(Testimony of Eugene S. Hawkins.)

A. We had just moved into on Kosciusko Island in the Edna Bay vicinity in the best, biggest and best block of timber in Southeastern Alaska.

Q. Who were you buying that timber from?

A. From the Forest Service. [110]

Q. How much were you required to purchase from the Forest Service per year?

A. A minimum of 20,000,000 feet.

Q. How would the quantity of the lumber run in that area as compared with what you sawed on the average in 1947?

A. The amount of uppers, which is shops and clears, would have tripled the previous year from the other areas.

Q. Did you actually cut any timber at Edna Bay?      A. Yes.

Q. And how much did you cut?

A. 10,000,000 feet.

Q. By what date did you have 10,000,000 feet at Edna Bay?

A. We had that much cut by, well, about March 15th.

Q. And tell me, was there a union organized at Edna Bay?      A. No.

Q. Was there one organized elsewhere that had jurisdiction at Edna Bay?      A. No.

Q. Were the loggers at Edna Bay members of any union?      A. No.

Q. Mr. Hawkins, was there a time when there was a strike at Edna Bay?      A. Yes.

(Testimony of Eugene S. Hawkins.)

Mr. Andersen: I object to this. I can't see the relevancy of it at all. [111]

The Court: True; but I assume it is preliminary.

Mr. Banfield: It is, if the Court please.

Q. When was that strike there?

A. Just a few days prior to April 10th.

Q. Prior to the picket line here? A. Yes.

Q. And was that strike settled? A. Yes.

Q. How soon?

A. I would say a few days after the 10th; possibly the 15th or 20th.

Q. Did the men during the period of this negotiation take any action through any union?

Mr. Andersen: Unless relevancy is stated, I am going to object that there is no relevancy and for the further reason that this is obviously hearsay. No foundation has been laid at all, save and except for hearsay. So far as the witness is concerned, he already stated that during this time he was in Juneau. Now, I don't know how far Edna Bay, Alaska, is. But distances in Alaska are usually quite long; at least that is my experience since I have been here. I move it be stricken as hearsay.

The Court: What is the purpose?

Mr. Banfield: If the Court please, I can show and will show by laying a foundation what Mr. Hawkins did as far [112] as the Juneau Spruce Corporation is concerned.

The Court: Repeat the question.

Court Reporter: "Did the men during the pe-



(Testimony of Eugene S. Hawkins.)

riod of this negotiation take any action through any union?"

Mr. Andersen: Obviously it is calling for the conclusion and opinion of the witness.

The Court: That may be, if it is just a guess. He may have personal knowledge. On your promise that it is relevant or that you will connect it up with something relevant——

Mr. Banfield: I will withdraw the question regarding the strike.

The Court: You already asked him. He testified there was one and it was settled.

Q. Mr. Hawkins, were you in charge of the Edna Bay operation? A. Yes.

Q. And have you personal knowledge of what you testify regarding the labor conditions at Edna Bay? A. Yes.

Q. Did you negotiate the settlement of this strike? A. Yes.

Q. How was it settled?

A. The employees of the camp presented us with their signatures representing more than 50% of the employees as belonging to the I. W. A. Union and designated them as the bargaining agent for them.

Q. Now, which I. W. A.?

A. It was the Ketchikan local.

Q. And then was there an agreement made?

A. Yes.

Q. And with whom?

A. With the I.W.A. Local, Ketchikan local.



(Testimony of Eugene S. Hawkins.)

Q. Did you have a steady labor supply at Edna Bay?           A. Yes.

Q. And was the camp all set up ready to operate?       A. Yes.

Q. Would you have any difficulty getting 50,000,000 feet of logs, any difficulty getting fifty—

Mr. Andersen: I am going to object to that as a conclusion and opinion of the witness.

The Court: If you know, you can state.

A. Under the least favorable conditions—

Mr. Andersen: I move that be stricken. It is not responsive to the question, may it please the Court.

The Court: Just state what your ability would be with conditions as they were, not under the least favorable conditions.

A. We could get considerably more than 50,000,000 feet.

Q. How many logs were on hand here in the harbor?

A. At the time of the strike, on hand and on the way here in tow of our boats, a total of 10,000,000 feet. [114]

The Court: Well, now, it isn't clear, I don't think, whether the capacity of 50,000,000 feet is limited to Edna Bay or to all operations.

Mr. Banfield: If the Court please, I think he quite clearly stated, but I can bring it out more clearly for the Court's benefit.

Q. How much of this 50,000,000 feet did you intend to cut in 1948 from Edna Bay?

(Testimony of Eugene S. Hawkins.)

A. 25,000,000 feet from Edna Bay.

Q. How much could you get from other sources?

A. In excess of 25,000,000.

Q. Had you made contracts or agreements for these logs from other sources? A. Yes.

Mr. Andersen: I am going to object to that. The documents would be the best evidence whether there was an agreement or what they may be.

The Court: Objection overruled.

Mr. Banfield: If counsel would wait——

Q. Were the agreements in writing or verbal?

A. For the most part, not verbal.

Q. If they were not verbal, what did they consist of?

A. A letter. I answered several letters to various loggers stating that we would——

Mr. Andersen: May it please the Court, the letters [115] would be the best evidence of what they stated.

Q. Now, Mr. Hawkins, on April 10th or prior thereto was it operating in 1948?

A. None whatsoever.

Q. How did you learn—I will withdraw that question. During what season of the year can you ordinarily operate the mill at Juneau?

A. We had in the course of changing the mill about made provision whereby we could run as long as possible in regard to snow.

Mr. Andersen: I move that be stricken. It is not responsive. I submit the question itself should be answered..

(Testimony of Eugene S. Hawkins.)

The Court: I assume his answer wasn't completed, but it seemed to me he was going on from there.

Q. During what period then, would you be closed down?

A. From the time the snow got one foot deep until it got back to one foot.

Q. Approximately how many months would that be in the winter?

A. Between two and three.

Q. Now, Mr. Hawkins, I believe you testified you had 10,000,000 feet cut at Edna Bay April 10, 1948. Had any of those logs been cut in the water or towed to Juneau?

A. We had put some in the water.

Q. About how many? A. About 250,000.

Q. Leaving about 9,750,000 at Edna Bay on the ground. A. Yes.

Q. Was that in addition to the 10,000,000 feet either being towed to Juneau or already in Juneau in the harbor? A. Yes.

Q. Have any of those logs you had on hand April 10, 1948, at Edna Bay been moved from there since?

A. No.

Q. Have any of the logs in the harbor April 10th or being towed here been sawed or disposed of in any manner? A. Some were sawed.

Q. Where are the remainder?

A. At various log storage areas.

Q. Where?

(Testimony of Eugene S. Hawkins.)

A. Across the Channel and down by Thane.

Q. Did you ever issue any orders to anyone at the mill with respect to further employment of longshoremen?

A. Yes.

Q. When were such orders issued?

A. The first few days of October.

Q. And to whom was that order issued?

A. To George Schmidt.

Q. What was his position?

A. Assistant Manager.

Q. And what was the order? [117]

A. I was in Seattle at the time. I sent a wire stating for him——

Mr. Andersen: May it please the Court, I will object to the answer. The wire would be the best evidence of what was conveyed to Mr. Schmidt.

The Court: I don't know that it is the identical words that are intended to be gotten into evidence. It is what was the order.

Q. What was the order in effect?

A. To not hire any more longshoremen regardless of for whose account. I believe that was the gist of it.

Q. Why did you issue this order?

Mr. Andersen: I object. It is incompetent, immaterial and irrelevant, may it please the Court.

The Court: Objection overruled.

A. Mr. Schmidt had wired me—wrote a letter that a committee of the local longshoremen——

Mr. Andersen: I object to this as not the best evidence.

(Testimony of Eugene S. Hawkins.)

Q. Do you have the letter he wrote to you?

A. Yes.

Q. The original letter he wrote to you?

A. A copy of it.

Q. Do you have the original?

A. I believe so. [118]

Q. Where is it, do you know?

A. It would be in the files of the Juneau Spruce Corporation.

Q. And you brought the original back to the office here in Juneau from Seattle and filed it?

A. Yes.

Q. Are you sure that it is in the files of the Corporation; do you know of your own knowledge that it is there?

A. No.

Mr. Banfield: If the Court please, I have not been able to find the original, but I do have from the files what appears to be a copy. Will counsel stipulate to the use of the copy?

Mr. Andersen: If you lay a foundation——

Mr. Banfield: We will ask the privilege of calling——

The Court: You can put it in and have it marked for identification.

Mr. Andersen: I also want to object on materiality.

The Court: I doesn't seem material to me, but I assume counsel wouldn't be going into it if it was not material. If you think it is material to your case, have it marked for identification now



(Testimony of Eugene S. Hawkins.)

and examine the witness regarding it and then have it introduced as an exhibit.

Mr. Andersen: Could I have counsel state the materiality?

Mr. Banfield: Yes. For the purpose of showing a [119] further demand was made to Mr. Schmidt that employment be given those longshoremen to load those barges.

The Court: The same already given?

Mr. Banfield: No; not to Mr. Hawkins, but to Mr. Schmidt, and he communicated it to Mr. Hawkins, and Mr. Hawkins——

The Court: It is immaterial what officer of the plaintiff corporation or what demand was made if they merely reiterated the former demand.

Mr. Banfield: True, it is similar to those previously in evidence, but it is another incident, and we want to show what Mr. Hawkins did, while he is here on the witness stand, as a result of Mr. Schmidt's communication to him.

Mr. Strayer: If I may interrupt, the testimony here has shown in the past the practice had been for longshoremen to load some types of vessels—fishing boats and cannery tenders—where longshoremen were engaged to accommodate the owners of those vessels. Mr. Hawkins testified he ordered that there be no more longshoremen for any purpose. I think it is in the order, showing why he gave the order. This explains the order.

Mr. Andersen: I don't believe the why is important.



(Testimony of Eugene S. Hawkins.)

The Court: It is impossible to tell at this stage how material the letter is that resulted in the order. If it is material, you may have it marked for identification.

Clerk of Court: Plaintiff's Exhibit 5 For Identification. [120]

(Whereupon, Court recessed for five minutes, reconvening as per recess with all parties present as heretofore and the jury all present in the box; whereupon, the trial proceeded as follows: the witness Eugene S. Hawkins resumed the witness stand and the Direct Examination by Mr. Banfield was continued as follows:)

Q. Mr. Hawkins, when you gave this order, what was your reason for giving the order?

A. Well, there was one reason——

Mr. Andersen: I object to the reasons as being purely conclusions of the witness, incompetent, irrelevant and immaterial.

Mr. Banfield: What a man has in mind for doing something isn't a conclusion; it is a fact.

The Court: Objection overruled.

A. The one reason was I was going to return in a short time and bring Mr. Card with me, and that they had caused so much trouble and things prior to that, I thought it was best if we just didn't have any more relations in any way.

Q. Did any persons employed by the Juneau Spruce Corporation in March or April, 1948, participate in the picket line?

(Testimony of Eugene S. Hawkins.)

Mr. Andersen: Will you repeat that question, Miss Reporter?

Court Reporter: "Did any persons employed by the Juneau Spruce Corporation in March or April, 1948, participate [121] in the picket line?"

Mr. Andersen: I object on the ground that it calls for a conclusion of the witness. There is nothing showing this gentleman was here during all that time.

The Court: It would be predicated of course on the assumption that he would have personal knowledge, otherwise he couldn't answer, obviously.

Mr. Banfield: If the Court please, the witness testified the picket line was there twenty-four hours a day as long as he was Manager and he testified he was Manager from April 10th until June 1, 1948.

The Court: It seems to me though that your question ought to take in the entire period. Why pick out one period and not the other months?

Mr. Banfield: The picket line wasn't established until April 10th and he left June 1st.

The Court: I thought you said "March or April."

Mr. Banfield: 1948.

Q. Did any persons employed by the Juneau Spruce Corporation during March or April, 1948, participate in this picket line after it was established on April 10th?      A. No.

Q. Did any person employed by the Juneau Spruce Corporation after October 23, 1947, partici-

(Testimony of Eugene S. Hawkins.)

pate in this picket line after April 10th? [122]

A. No.

Q. At this meeting of October 23rd, at which, you testified, Mr. Card and the I.L.W.U. committee was present, do you remember what was said at the end of that meeting by the longshoremen's committee as it left?

Mr. Andersen: I submit, may it please the Court, that has already been asked and answered.

The Court: I thought it was asked and answered.

Q. Do you know of anything else in addition to which you have already testified? A. Yes.

Q. What?

A. They stated as they left that they would see to it that our barges never got unloaded at their destination if longshoremen weren't hired to load them here.

Q. Did barge loading require any special skill?

A. No.

Q. Now, Mr. Hawkins, after November 3, 1947, if a man was employed at your mill, how could he bargain with you?

Mr. Andersen: I fail to see the materiality of this, your Honor.

The Court: I assume it is preliminary.

Mr. Banfield: If the Court please, it is. What I am trying to bring out at this time is the relationship between the mill employees and the Company, and all of them, [123] under the terms of

(Testimony of Eugene S. Hawkins.)

this agreement. In other words, what was the actual practice after this agreement went in effect of collective bargaining. One of the contentions of the longshoremen was that they be hired and bargain through the Longshoremen's Union. I want to show what the practice was under this contract.

The Court: You may proceed.

A. They would make an appointment through their foreman or by the office force to talk over their grievances with me, and I would iron it out.

Q. You mean to imply the men deal individually directly with you? A. Yes.

Q. Is there any other way they could take up a grievance or some request?

Mr. Andersen: The question has been asked and answered. He asked the practice.

Mr. Banfield: He testified to a practice. I am asking if there is any other method.

The Court: You may answer.

A. Through the Shop Committee of the I.W.A.

Q. Now, that would be for an individual to bargain with you; he could do it directly or through the I.W.A.; is that correct? A. Yes. [124]

Q. If a group of employees wanted to bargain with you, how could they do it?

A. Through the I.W.A.

Q. Could they collectively bargain with you any other way except through that Union?

A. No.

Q. Did the mill during the time you were Mana-

(Testimony of Eugene S. Hawkins.)

ger maintain a time clock?      A. Yes.

Q. Did the longshoremen ever punch the time clock?      A. No.

Q. Did the other employees punch a time clock?  
A. Yes.

Mr. Banfield: That is the direct examination of the witness. You may cross-examine.

Cross-Examination

By Mr. Roden:

Q. Mr. Hawkins——

Mr. Andersen: Could I interrupt just a moment? At this point, so far as the International is concerned, I want to renew my motion to strike each and all of the testimony of Mr. Hawkins. No foundation was laid, so far as the International is concerned, for the admission of the testimony.

The Court: I don't think you can consider the testimony of each witness alone. He has to show the relation to other testimony.

Mr. Andersen: I knew it would be denied at this time, but I thought it was the appropriate time to renew the motion.

The Court: The motion is denied.

Q. Mr. Hawkins, did I understand you to say you became Manager the 1st of April, 1947?

A. No. I think it was——

Q. When did you become Manager?

A. I think it was the 1st of May.

Q. The 1st of May, 1947?      A. Yes.

Q. You at that time were Vice President of the Company?      A. Yes.



(Testimony of Eugene S. Hawkins.)

Q. How long did you continue as Manager?

A. Until June 1, 1948.

Q. Are you still an officer of the Juneau Spruce Corporation?      A. Yes.

Q. What position do you occupy?

A. Vice President.

Q. And you are the gentleman who negotiated the deal for the Juneau Spruce Corporation to purchase the assets of the Juneau Lumber Mills; is that correct?      A. Yes. [126]

Q. When did you first come to Juneau?

A. In July, 1946.

Q. In July, 1946. Did you then start negotiations with Mr. Rutherford?      A. Yes.

Q. Mr. Rutherford was practically the sole owner?

Mr. Banfield: If the Court please, this is improper cross-examination. The witness has not testified regarding the negotiations leading up to the sale and purchase at all. He started his testimony at the time of the actual take-over and actual transfer. The negotiations that preceded had nothing to do with this at all.

Mr. Roden: He testified to negotiations between he and Mr. Rutherford. I want to ask how well and how much informed he was about existing conditions.

The Court: You think it is material?

Mr. Roden: Yes.

The Court: Objection overruled.



(Testimony of Eugene S. Hawkins.)

Q. Did you at that time commence negotiations with Mr. Rutherford?      A. Yes.

Q. He was practically the sole owner of the Juneau Lumber Mills Company?      A. Yes.

Q. And also of the yard at Anchorage? [127]

A. Yes.

Q. And of what is known as the Independent Lumber Company in Fairbanks—he and Roy Ferguson were owners of the Independent Lumber Mill in Fairbanks?      A. Yes.

Q. How much time did you spend on the premises when you came up and to the time the negotiations were consummated in the agreement? I believe it is identified here as Exhibit No. 1.

A. I made a survey of the mill two different times, one time when it was running and one time when it was closed, taking about two days each time. The balance of my time was spent in the office of the Juneau Lumber Mills and Mr. Rutherford.

Q. Roughly speaking, how much time did you put in when you came first and the time the agreement was consummated?

A. Probably about a total of two weeks.

Q. And of course you spent most of the time down on the premises of the Juneau Lumber Mills?

A. In the office; yes.

Q. This agreement which is the agreement between the Juneau Lumber Mills and your Company was consummated on the last of April, 1947?

(Testimony of Eugene S. Hawkins.)

A. Yes.

Q. And in this agreement Mr. Banfield called your attention [128] particularly to the last paragraph which says: "It is expressly understood that first party," that is the Juneau Lumber Mills, "is not assigning to second party and second party is not accepting or assuming any collective bargaining or labor agreements which may exist between first party and its employees except with respect to the return transportation fare above noted, and that second party does not assume and shall not be responsible for any claims or demands for wages——." The purpose of that last paragraph was that you would not take over any agreements, which at that time existed or might have existed or may have existed, by the Juneau Lumber Mills for the Juneau Spruce Corporation?

A. Yes.

Q. This was the last day of April, 1947, wasn't it?

A. Yes.

Q. And at that time what was known as the Wagner Act was in full force and effect, wasn't it?

A. Yes.

Q. You knew that?

A. Yes.

Q. And it continued in effect until the 23rd of June, 1947, didn't it?

A. Yes.

Q. When the agreement was made, you knew the conditions so [129] far as operating the saw-mill was concerned and loading lumber was concerned; isn't that right?

(Testimony of Eugene S. Hawkins.)

A. There was no loading of any lumber that I ever seen by Mr. Rutherford.

Q. But at that time you knew that the sawmill workers were running the sawmill, didn't you—operating the sawmill? A. Yes.

Q. And whenever any lumber was to be shipped you knew that agreements existed for the transportation of the lumber, for the loading of the lumber by the Juneau—by Local 16?

Mr. Strayer: If your Honor please, I would like to make an objection. I don't think the practice in effect by the Juneau Lumber Mills, none except the Corporation, are of any materiality in this case.

The Court: I suppose the purpose is that he knew what the previously existing arrangement was. Is that the purpose?

Mr. Roden: That is the purpose; yes, your Honor.

The Court: Objection overruled.

A. I would say that I didn't know all of them. I didn't know Mr. Rutherford's business that well, but I did see, when I was up here in July, a commercial steamship being loaded and was told that lumber was going to Anchorage and Fairbanks collectively.

Q. After you became Manager, right when the agreement was [130] signed, or right after, a notice was posted, you stated, in which the Juneau Lumber Mills told the employees that it had dis-

(Testimony of Eugene S. Hawkins.)

posed of its assets down there and that the mill would be shut down for one day and that the men might make application to be employed immediately thereafter; that is right?

A. That is right.

Q. You didn't give any notice to the longshoremen? A. No.

Q. And was it on the 2nd of May when you commenced active operations on behalf of the Juneau Spruce Corporation?

A. I would have to qualify that. I don't recall as to whether it was the first or second day of May.

Q. We can agree on this—there was one day of suspension of operations down there? A. Yes.

Q. And during that day I presume the men came and signed on? A. Yes.

Q. And you re-employed all the men that Roy Rutherford had employed?

A. Yes; and some more.

Q. And they got the same compensation from you as they had received for doing the work for Rutherford? A. Yes.

Q. And the same kind of work was required by the different [131] individuals when they started operating and working for you as they had for Roy Rutherford?

A. Not without exception.

Q. Let us say, generally speaking; that is right?

A. I would say generally, yes.

Q. And the sawmill's business was carried on

(Testimony of Eugene S. Hawkins.)

about the same way as it had been carried on during the Rutherford administration; isn't that right?

A. I don't associate exactly what you have in mind. I had a definite plan for the improvement and more efficient operation which I started on the first day that we took over.

Q. I mean, the general work of cutting lumber?

A. We manufactured lumber.

Q. Substantially the same as he did?

A. Yes—or any other lumber mill.

Q. If there was any lumber sold, it was in the same way as when Rutherford was running the plant; isn't that right?

A. I don't know that to be a fact.

Q. You started delivering lumber to the Engineers' Dock by your carrier; isn't that right?

A. Yes.

Q. And Roy Rutherford had done that before?

A. Yes.

Q. And if a cannery tender pulled in there and loaded lumber, it was the same as on a cannery tender while Roy Rutherford [132] was operating?

A. I couldn't say as to that.

Q. How did you get rid of your lumber which was not sold to the Engineers?

A. I explained that yesterday, the method we used in disposing of lumber to cannery tenders and others, in all phases. I don't know how Rutherford did it.

Q. Let's say, when an Alaska Steamship steamer



(Testimony of Eugene S. Hawkins.)

pulled in to take lumber to your yard in Anchorage or Fairbanks, it was loaded by the members of Local 16, wasn't it?      A. Yes.

Q. The same as it had been loaded by members of Local 16 while Roy Rutherford was running the plant?      A. Yes.

Q. And if a cannery tender pulled in and wanted lumber, it was loaded on the boat by members of Local 16, wasn't it?

A. No, I wouldn't say——

Q. Who loaded it then?

A. Immediately upon taking over, our insurance companies—I had a conference with them before coming up here about safety features and so on, and we drew up a conclusion of practices that would be the best under that system, and that was that—one of them was that all of our employees should work on our equipment and shouldn't work on any other's equipment. [133]

Q. That was carried out?      A. Yes.

Q. So, when your equipment was used, your employees were handling the lumber?      A. Yes.

Q. And if anybody else's equipment was used, the longshoremen handled the lumber; is that right?

A. I would say that would be materially right.

Q. What do you mean by "materially"?

A. I don't know of any other instances where any other equipment handled lumber other than the steamship company, and what the steamship company did with the longshoremen was their——



(Testimony of Eugene S. Hawkins.)

Q. How about when a cannery tender pulled in there and wanted a couple thousand boxes and had no means, did they use your equipment?

A. We sold the boxes to the cannery tender and loaded them on their cannery tender.

Q. They used their own equipment?

A. No. We run our own equipment and used our own equipment.

Q. But you landed it on the cannery tender?

A. Yes.

Q. The same as Roy Rutherford?

A. I don't know how——

Q. Do you know how he did it? [134]

A. No, I don't know.

Q. How could he have possibly done it?

Mr. Strayer: I don't think that is proper.

The Court: It is cross-examination.

Q. You used the same crane that Roy Rutherford had used?

A. Yes—cranes, two of them.

Q. Rutherford had used those cranes to load lumber?

A. I never saw Rutherford——

Q. Was there any reason to use them if not for the purpose of loading and unloading?

A. Yes.

Q. What for?

A. To stack for storage and for moving of timbers. One particularly was used for moving timbers from the green chain and had wheels so it could move up and down for stacking of lumber.

(Testimony of Eugene S. Hawkins.)

Q. How do you think he loaded lumber on scows?      A. How do I think?

Q. Yes.

A. I imagine he used his own crane.

Q. In other words, as far as appearances were concerned, there was no difference between them while Rutherford was operating or when you were operating; isn't that right?

Mr. Strayer: The witness has already said he didn't know, your Honor. [135]

Mr. Roden: Let him say it again.

The Court: He has already said it.

A. I don't like to assume things I don't know about.

Q. But you can't tell us now of any difference, can you?      A. No.

Q. And the longshoremen would come down there when any loading was to be done after the 30th of April, 1947, the same as they had done before April 30, 1947; isn't that true?

A. I don't know what they done before that.

Q. As far as you know, there was no difference; is that right?

A. That is right. I don't know anything about the previous operation.

Q. And this went on until late in the fall of 1947; is that correct?      A. Yes.

Q. And it was in the fall of 1947 when we heard the first rumblings about difficulties springing up; isn't that right—between the longshoremen on the

(Testimony of Eugene S. Hawkins.)

one hand and your company on the other hand?

A. I don't know when you heard about anything.

Q. When did you hear; tell us when you heard about it?

A. In July was my first contact.

Q. There wasn't anything serious at that time, was there?

A. I don't know what would be determined "serious."

Q. You know what "serious" means? You are a businessman, [136] aren't you? A. Surely.

Q. Well—serious trouble.

A. There was no threat of a picket line. Their request was for work the same as before.

Q. That wasn't anything much out of the way?

A. What?

Q. For the longshoremen to come and talk to you when they saw what was going on? Put it this way—the first time any difficulties arose was when you started to load the first barge? A. No.

Q. I am talking about serious difficulties.

A. The seriousness of it then was no different than it was in July. There was just a request for work both times.

Q. And you told them you couldn't give them the work? A. Yes.

Q. At this time or by this time you had been negotiating a contract with the I.W.A.; isn't that right? A. Yes.

(Testimony of Eugene S. Hawkins.)

Q. Now, before we go any further let's tell the jury what I.W.A. really means. You and I know, but maybe some people here are not as well advised.

A. You would like to have me tell what the I.W.A. is?

Q. Yes—what the letters stand for, mainly so the jury will [137] know.

A. I.W.A. is International Woodworkers of America which is a subsidiary of the C.I.O. Sawmill & Woodworkers Union.

Q. And their Local was M-271?

A. M-271; yes.

Q. And what are the letters for the longshoremen?      A. I.L.W.U.

Q. Which means?

A. International Longshoremen & Warehousemen's Union.

Q. And their Local was No. 16?      A. Yes.

Q. In the meantime now—I am now talking about the summer of 1947—you were negotiating a contract with the I.W.A.—that is, the International Woodworkers of America?      A. Yes.

Q. And you had a number of meetings with representatives of that Local?      A. Yes.

Q. And the thing was discussed many times; that is right, isn't it?

A. The contract was discussed.

Q. As to what would go into it and this and that?

A. Well, the provisions of the contract were changed and made agreeable by both parties.

(Testimony of Eugene S. Hawkins.)

Q. In the meantime you were running under the contract which [138] the I.W.A. had with the Juneau Lumber Mills; isn't that right?

A. No.

Q. What contract were you running under; what understanding were you operating under?

A. We had an understanding to pay the same wages as Rutherford and work the same hours as he was, and other working conditions would be talked over embodied in the new contract as time went on and we could possibly get together and negotiate it.

Q. At that time you were familiar with the contract entered into between Local 271, the Woodworkers, and the Juneau Lumber Mills?

A. I had seen the contract.

Q. When you finally prepared your contract which was signed November 3, 1947, you copied a good portion of the Rutherford contract into your contract; isn't that right?

A. No.

Q. None of it?

A. I didn't copy any of it; no.

Q. Who prepared the written contract there?

A. Mr. Card of the Coos Bay Lumber Company prepared that contract.

Q. Now, in that contract there is a provision which says, designated here as the "Union Recognition": "The Union is [139] hereby recognized as the sole and exclusive collective bargaining agent for all the employees of the Employer," that is you, "in its sawmill, manufacturing and retail



(Testimony of Eugene S. Hawkins.)

departments at Juneau, Alaska,"—and then you excluded the superintendents, foremen and so forth. If this was to cover all the employees of the employer, why did you mention that it covered the employees engaged in its sawmill, in its manufacturing plant, and in its retail departments?

A. Well, the retail department is a department by itself, although it is located on the premises. It is run separate of the sawmill operation entirely. The I.W.A. wanted to include that in their agreement to bargain for that one. And manufacturing just covers everything, every phase of manufacturing, and that is why it was worded in that way, and that is a standard wording for all the contracts that I have ever negotiated or been a party of. It is just a phraseology that is accepted by the lumber industry.

Q. And that is exactly the phraseology which was used in the Juneau Lumber Mills' agreement with the same Union; isn't that true?

A. I wouldn't know that, but I would think probably it would because it is a standard phraseology.

Q. All right. Now, Rutherford had three departments down there the same as you did? [140]

A. No.

Q. A sawmill?                      A. Yes.

Q. And he had a planing and manufacturing department, didn't he?                      A. Yes.

Q. And he had a retail yard, didn't he?



(Testimony of Eugene S. Hawkins.)

A. Yes.

Q. And he sold out that retail yard substantially what you have—lumber, plasterboard; you sell cement, and you sell this and sell that; isn't that true?

A. Yes.

Q. In other words, you carried on the same as Rutherford did in that respect; isn't that true?

A. No. Rutherford didn't make any distinction or separation of the retail plant from the rest of the plant.

Q. He did with M-271, didn't he?

A. I don't know.

Q. You said he had in his contract?

A. No; I don't know.

Q. You have seen the contract?

A. Yes. I didn't know that provision was in there; it could or couldn't be.

Q. You know now it was in there?

A. No. If I could see it—— [141]

Q. Have you a copy of the Rutherford contract?

A. No.

Mr. Roden: Have you got one?

Mr. Banfield: No. We don't operate under that.

Mr. Roden: All right. We will try to produce one.

Q. In all your negotiations with the Longshoremen's Union you gave them the answer that you could not consider their application for employment because you had assigned that particular work to somebody else; isn't that right?

(Testimony of Eugene S. Hawkins.)

A. That isn't the wording that I used.

Q. Well, substantially, it is the summation of what you told them, isn't it?

A. That we had recognized the I.W.A. as the exclusive bargaining agent for our employees and that was the reason we couldn't bargain with them.

Q. That was the sole reason? A. Yes.

Q. None other? A. No.

Q. Now, things kept on running along until the spring of 1948; is that right? A. Yes.

Q. After the winter shutdown you made preparations to start up for the 1948 season?

A. Yes. [142]

Q. And shortly, about the time that the season opened, you were again approached by members of Local 16, and they asked you if you would turn over to them the loading of your barges and other water-borne transportation means, and you had a number of meetings there, and no agreement was reached, and, as you said a moment ago, the reason why you could not see your way clear to do business with Local 16 was because this particular kind of work had been assigned by you to Local 271; isn't that right? A. Yes.

Q. Later on you had a number of meetings with representatives of Local 271 and Local 16 in which Local 271 asked you to turn that work over, namely the loading of the lumber, to Local 16; isn't that true? A. Yes.

Q. And you still said that you couldn't do so

(Testimony of Eugene S. Hawkins.)

because you had assigned that work to Local 271 which was now asking you to turn the work over to Local 16. Is that the position you took then?

A. Yes.

Q. At this time if your sole reason for not assigning this work to Local 16 was because you had turned it over to 271 and 271 asked you to turn it over to 16, your contention was no longer tenable; isn't that true?

A. Yes—that wasn't the sole and only reason that developed. [143]

Q. You found another reason?

A. Another reason had been developed by that time.

Q. You never mentioned that reason either to representatives of 271 or of 16, did you?

A. I don't recall any specific instance; no.

Mr. Roden: I think that is all as far as Local 16 is concerned.

Mr. Andersen: Just a moment, your Honor. Just a few questions, your Honor.

Q. (By Mr. Andersen): Mr. Hawkins, with respect to this contract of November 3rd—I believe that is Exhibit No. 2—when did you say you entered into that agreement and signed it?

A. I didn't understand that.

Q. With respect to the Company and the I.W.A., when did you say you entered into and signed that contract; what was the date?

A. It was signed November 3rd.

(Testimony of Eugene S. Hawkins.)

Q. Prior to November 3rd there was never any actual agreement between the parties about that contract?      A. Yes.

Q. As to all terms?      A. Yes.

Q. As to all terms? Is that true?

A. Yes. [144]

Q. Now, this exhibit here—didn't you receive word from Mr. Schmidt on October 18th that the Union turned down the proposed contract?

Mr. Strayer: The letter?

Mr. Andersen: I am not referring to a letter. I am asking if he didn't receive word.

Mr. Strayer: I think the witness has a right to see the letter.

Mr. Andersen: I am not referring to anything. I am just referring to word he received.

The Court: The rule here is that before a witness is examined on anything in writing, the writing must be shown him. I don't see that this is—

Q. Didn't you receive word from Mr. Schmidt on October 18th that the contract had been turned down?      A. I don't recall it.

Q. Did you or did you not receive any such word?      A. I don't know.

Q. Is it your testimony here that prior to October 18th you and this Union had agreed, not disagreed, on the terms of this contract?

A. No.

Q. You hadn't agreed to it on October 18th?

A. I don't know the exact date we agreed, but it was prior to November 3rd. [145]

(Testimony of Eugene S. Hawkins.)

Q. What happened was that on November 3rd, or maybe a day before, you finally came to an agreement on the terms of the contract and on November 3rd signed it; isn't that true?

A. No.

Q. Did you have a contract, rather than an agreement, between you in effect before—on October 1st?

A. We finally came to an agreement on this—all the provisions of the contract. I had business I had to attend to and had to leave. Mr. Card was left with authority to sign the contract, and I don't know the specific day that this agreement amongst all parties was consummated.

Q. When did you leave?

A. I don't know what specific day I went.

Q. What month? A. October.

Q. The first part or latter part?

A. I was gone on November 3rd.

Q. You weren't here on November 3rd?

A. No.

Q. Did you leave in November or did you leave in October?

A. I would say that I left in October.

Q. The first part or last part?

A. I would say the last part.

Q. About how last? [146]

A. It was after Mr. Card's and my arrival back here from the States on the 23rd of October.

Q. You were here the 23rd of October?



(Testimony of Eugene S. Hawkins.)

A. Yes.

Q. And left Mr. Card here to finish the negotiation of the contract, didn't you? A. No.

Q. As a matter of fact didn't you tell him that is what you paid him for—negotiating this contract and seeing that it was negotiated?

A. Yes; but I didn't leave him here. I was here while the final negotiations were taking place.

Q. I assume you left sometime after October 23rd; is that correct? A. Yes.

Q. So, at the time that you left the contract hadn't been signed, had it?

A. No, it hadn't.

Q. And you have no further knowledge of your own so far as those facts are concerned—that is, so far as the negotiating of the contract is concerned? A. It was completed when I left.

Q. That is, you had come into general agreement about certain things; isn't that true—regarding the hours and working conditions and wages to be paid? [147]

A. We came to a general agreement on all the provisions of the contract.

Q. Had you drafted it at that time?

A. Yes.

Q. Was the contract in completed form on that day?

A. I wouldn't definitely say it was typed. It was in completed form.

Q. All you are saying is that you had talked



(Testimony of Eugene S. Hawkins.)

over the terms and conditions of employment, and nothing was drafted?

A. Before I left—I stayed specifically so to be sure I knew all the things that were agreed on by everyone before I left, and it was being drafted. I don't know if it was written on any paper or what. I don't think it was completely typed up in contract form at that time, though it may have been.

Q. As a matter of fact nothing was typed up, was it?      A. Yes.

Q. Can you tell me how much of it was typed?

A. No.

Q. As a matter of fact what you were doing was simply looking at the old I.W.A. contract between the I.W.A. here and the Juneau Lumber, wasn't it—      A. No.

Q. And discussed those terms and conditions?

A. No. [148]

Q. In any event you were trying to come into general agreement and when it was executed it would be the contract between you?      A. No.

Q. Tell me what is wrong about what I have said.

A. In the first place, during the month of June, I believe, or the last part of May possibly, I drafted a contract myself and with all the provisions I thought were fair to both parties, and all the things were in it, and I submitted it to the I.W.A. officers, and they went over it and found provisions they

(Testimony of Eugene S. Hawkins.)

didn't like and thought there should be some changes in it and brought it back.

Q. From that time on you both started, back and forth, and you would agree on something, and there would be a change agreed to on something else, and that continued all the way up until the contract was signed; isn't that true?

A. It continued all the way up to sometime in the last part of October.

Q. Were you here in May and June of 1947?

A. I wouldn't say I was here all the time.

Q. As a matter of fact you spent most of your time away from the mill?

A. I think I probably spent 50 per cent of the time away.

Q. Consecutively, or staggered months or staggered weeks?

A. There was no schedule for it at all. We were just getting [149] the company in operation and there was more or less activity in all branches. I left for various places upon the need for it, so sometimes I was only here a day or two and gone a week, sometimes a month and gone a week. There was no rhyme or reason as to the times for leaving and being here.

Q. And during your absence Mr. Schmidt was in charge; isn't that true?      A. Yes.

Q. And stationed here continually with the title of Assistant Manager; isn't that true?

A. That is right.

(Testimony of Eugene S. Hawkins.)

Q. Are you still an employee of the Company?

A. No.

Q. You left the employ of the Company then June 10th of last year?

A. No. August 15th of last year.

Q. August 15th you left the employ of the Company; you still occupy the position of Director of the Company but are not employed by the Company?

A. That is right.

Q. Do you know if this contract was signed—that is, Exhibit 2—do you know if it was signed at Juneau, or where was it signed?

A. It was signed at Juneau, Alaska. [150]

Q. Do you know if the contract has been kept here all the time or in the head office in Portland, which, I understand, is the head office of the Company?

A. Here all the time.

Q. Did you send a copy of it to Portland?

A. There were numerous copies made of it.

Q. Did you send the contract to Portland with a letter accompanying the contract?

A. I don't recall the specific time of doing it. I did send a copy of the contract to Mr. Card in Coos Bay prior to the signing. Mr. Card may or may not have taken it back for distribution—

Q. Mr. Card was an employee of Juneau Spruce Corporation?

A. Not an employee in that sense.

Q. An agent of the Company, working for the Company during this period of time?

(Testimony of Eugene S. Hawkins.)

A. Yes.

Q. In the Portland office did you see any correspondence regarding this contract after it was signed?

A. My activities in Portland was as a Director, and I never got into any phase of the contract or anything or the files to know whether it was there or to have seen it.

Q. As a matter of fact—when did you return to Juneau after you left in the latter part of October; when did you return? [151]

A. I don't recall the exact time I returned.

Q. Do you recall where you went?

A. I don't know now; I think to the logging camp.

Q. You didn't go to Portland?

A. I am almost sure I didn't.

Q. Do you know when you returned to Juneau?

A. No, I don't know when I returned to Juneau.

Q. Was it very long after November 3rd?

A. No.

Q. When you got back, didn't you take a copy of this contract and send it to Portland for the official files of the Company, advising them it was entered into?

A. I am almost positive that would have been Mr. Card's duties to see that anyone else in the Company would have it.

Q. Didn't you tell Mr. Card when he signed it

(Testimony of Eugene S. Hawkins.)

to send it to the officers of the Company for their records?        A. No.

Q. Or did you understand he would naturally do such a thing?

A. It never entered my mind. This is the main office.

Q. Is this? I thought it was Portland from what you said.

A. There is a Portland office, but everything is done in this office.

Q. Is that where the President maintains his office?        A. Yes. [152]

Q. You maintain your office of Vice President down there?        A. Not in Portland.

Q. And the corporate offices are in Portland and the operational offices are in Juneau; is that what you mean to say?        A. Yes.

Q. By the way, I understand from this contract that \$595,000, roughly, was paid for what you bought from the Juneau Lumber; is that true?

A. That was for physical assets.

Q. I say, for what you bought from the Juneau Lumber, you paid \$595,000?

A. With the inventories of logs, supplies and other things it would come to a bigger figure than that.

Q. How much of the physical assets, what percentage of the physical assets were located here in Juneau?

A. I don't know how to break this down.



(Testimony of Eugene S. Hawkins.)

Q. Just approximately?

A. I don't know how to give an approximate. We have a mill and retail yard in Fairbanks——

Q. You said you made a survey. If you made a survey, you must have broken it down into valuations. If there were twenty properties, it is certain every property must have had a valuation.

Mr. Banfield: When counsel started out, he said he was going to ask questions preliminary——

Mr. Andersen: I didn't make such a statement.

Mr. Banfield: All the questions about the Portland office or conversations where assets were split up has nothing here to do with the issues of this case, the right of this Company to assign work to whomsoever it pleases, and I object to it as irrelevant, and it is tiring everybody out and burdening the record.

Mr. Andersen: When the contract was introduced in evidence, I objected to its introduction as completely immaterial, among other objections. Over my objection the Court permitted it to go into evidence. If I understand the time-honored scope of cross-examination, I may examine on anything introduced. I think that is correct. He introduced it in evidence. I want to examine the witness on it.

The Court: That is, generally speaking that is true, but it seems to me that it is always subject to the condition that it be relevant or material. If you want to examine him as to the events leading up to making the contract, as you have, and what actually



(Testimony of Eugene S. Hawkins.)

occurred at the time of its execution, that is proper cross-examination. But what do you claim, so far as materiality is concerned, for a break down of the purchase price into percentages?

Mr. Andersen: I think, if the Court will permit me a few questions, I think the Court will see the development.

The Court: The Court will permit you to proceed. [154]

(Whereupon, the Court recessed until 2:00 o'clock p.m., May 2, 1949, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; whereupon the witness Eugene S. Hawkins resumed the witness stand and the cross-examination by Mr. Andersen was continued as follows:)

Q. What value did you place upon the property of the Company here in Juneau?

A. There never was any break down of this operation prior to the Juneau Spruce purchase.

Q. In other words, you simply considered the whole thing as one lump parcel? A. Yes.

Q. So far as you personally are concerned when making the valuation, didn't you go from property to property and place a value on each separate property?

A. No, I wouldn't say that I did.

Q. Then how did you arrive at the sum of \$595,000.00—simply by looking at the whole thing and placing a value on it?

(Testimony of Eugene S. Hawkins.)

A. Yes. The possibility of its earnings had a bearing on the value of it.

Q. Naturally.

A. And the outlets it had through the retail yards in Anchorage and Fairbanks and——

Q. That was the good will side of the business?

A. Yes. [155]

Q. But of course you didn't pay the good will part of the business; you simply bought the physical assets?      A. That is right.

Q. So the possibilities of profit were not considered in the purchase price then, were they?

A. In the light of the thought of whether or not it was worth that much, we never did go into an actual appraisal of the thing.

Q. How many properties were there altogether?

A. A retail yard, buildings and installation in Anchorage, a sawmill and retail yard and buildings in Fairbanks, a logging camp and equipment in Sea Otter Sound, and this sawmill here, boats, and——

Q. Trucks?      A. Carriers; no trucks.

Q. I understand your testimony is that in trying to arrive at the sum of \$595,000.00 you didn't break them down to determine the valuation of each property and then add them up to come to \$595,000.00?      A. We didn't do that.

Q. Did you inquire, Mr. Hawkins, as to the total amount of wages paid longshoremen during the preceding year from the date your corporation purchased the plant?      A. No.

(Testimony of Eugene S. Hawkins.)

Q. Did you inquire as to the total amount of money paid to [156] longshoremen by the plant and charged to customers and the work done by longshoremen and absorbed by the corporation?

A. I never went into the Juneau Lumber Mills costs or amounts of money taken in or disbursed.

Q. At the time of the conference with representatives of Local 16, did you compile any figures to show the total amount of expense chargeable to the Juneau Spruce Corporation directly—that is, if you gave them the work that the I.W.A. said they were willing to give them?

A. The I.W.A. didn't say they were willing to give them any work at this meeting.

Q. Whenever the time was, did you at that time make a computation of the total amount of money you would pay for this barge work—that is, all this work from the rail out? A. I believe I did.

Q. What was the total computation of wages you would pay, chargeable to your Company?

Mr. Strayer: I don't see where it is material. I suppose counsel is trying to get at whether it is a small or large amount of money. I don't see its materiality. Mr. Hawkins took the position the contract entitled him to. I object on that ground.

Mr. Andersen: Does the Court want argument on that?

The Court: You may state your views. [157]

Mr. Andersen: There is that reason and also more reasons. The Taft-Hartley law has a pre-

(Testimony of Eugene S. Hawkins.)

amble. This part of the Act states that one of the purposes, and probably the main purpose for its passage, is to have industrial tranquility and that management and labor get together and iron out their differences. At the appropriate time—may it please the Court, if a corporation or a company unreasonably refuses to enter into labor relations with any group or any union, particularly when at the core there are no jurisdictional issues involved—we will take the position at the appropriate time that it is contrary to public policy and they can't violate the spirit of the act, as he admitted has been done, and then secure damages for \$1,000,000.00 for a minimum amount of expense to the company. Here is a corporation that paid \$595,000.00, eventually to make \$1,000,000.00 in the next eight months for net profit, and then refuses to enter into labor relations.

The Court: That is more of an argument—and counsel should refrain from arguing matters of that kind.

Q. Will you give me the figures please?

A. I have no way of giving you the figures. It was just solely on my behalf to see what moneys was involved. I don't recall what the figures was nor recall the number of employees involved.

Q. It wouldn't have amounted to 2 per cent of your pay roll, would it? [158]

A. I don't have the personal knowledge to say that or anywhere close to it.

(Testimony of Eugene S. Hawkins.)

Q. You are Vice President? A. Yes.

Q. You ran the mill and were Manager for some little time? A. Yes.

Q. During the time you were there and actually managed—how long were you there, from May 1st to August 15th? A. Yes.

Q. What was the approximate longshore pay roll directly chargeable to and absorbed by the Juneau Spruce Corporation—I don't want dollars and cents; just approximately?

Mr. Strayer: Will you specify whether it was work by the longshoremen or longshore work performed by the sawmill employees?

The Court: Yes.

Mr. Andersen: I intended to ask that secondly.

Q. First, by longshoremen?

A. I just couldn't answer that.

Q. A very small amount, wouldn't it be?

A. As a comparison to the purchase price of the mill, using that as a comparison?

Q. No. As a comparison to the usual pay roll of the Company.

A. I would say very small as compared to the usual pay roll of the Company. [159]

Q. Less than 2 per cent? Less than 1 per cent?

A. I have no way of saying; but a very small amount.

Q. During the same period of time, tell me the amount of pay roll paid to the men who took care of loading cargo and the pay roll paid to and ab-



(Testimony of Eugene S. Hawkins.)

sorbed by the Juneau Spruce Corporation from the rail out, the same work the longshoremen came to you and said they wanted to do with I.W.A. consent from the bull rail out; what was the total amount?

A. That was done in conjunction with our yard work. Our yard employees did it. It was all intermingled with it. There was no break down of a specific job—loading scows, stacking or unstacking lumber. It was all made up in a day's work for them.

Q. During the period from the time you took over until you left there in August, how many barges did the Company operate?

A. Well, at one time—or do you mean the total number of barge shipments made?

Q. No. The total number of barges you operated, not the shipments made; the total number of barges you operated?

A. We started out with one barge and added another, then two more and took one off.

Q. An average of two?

A. I would say an average of three.

Q. And how long would they be at the plant; how long to load [160] and unload and make trips?

A. From one week or less. The barge was used in supplement to our storage area. We didn't load it—we loaded as lots were completed.

Q. In other words, would a total of two men be assigned to work on those barges steadily? Would it amount to that much?



(Testimony of Eugene S. Hawkins.)

A. I don't have any way of knowing that.

Q. How long have you been in the lumber business?

A. Since I was born.

Q. How old are you?

A. Thirty-seven.

Q. All your life?

A. All my life.

Q. How many men would you say normally would be assigned to work on those barges steadily?

A. When we actually were loading lots on the barges, we had one man attending the slings on the barge and sometimes two, and one man operating the crane, and one man attaching the slings on the dock; and when this particular lot was put on there, they did what else there was in the yard—stacking in the yard or unstacking—until one or more lots were completed to go on the barge. When we were in the actual process of putting lots on the barge, a total of four men were used. [161]

Q. It wouldn't average out to the total of two men per week, would it?

A. I can't see how I could answer that.

Q. You mean you can't answer that?

A. What it would average out—it takes four men to do the job, not less than three.

Q. Granted. But they didn't work full time, did they?

A. No.

Q. During the period from May to August, would it average out as much as the full time of two men a week?

A. Steadily employed? Two men a week?

Q. Would it average that?

(Testimony of Eugene S. Hawkins.)

A. I don't know how I could use a basis of thought to arrive at that figure.

Q. If you have five men working on the job, how long would it take to load or unload a barge?

The Court: It seems to me you spoke of two things both of which differ—one, loading a barge for storage; and one, for shipment. One might be slow and the other leisurely.

Mr. Andersen: I will split it up as your Honor suggests.

Q. Assuming you are loading for shipment, how long would it take five men to load the barge for shipment?

A. That would depend on the particular orders. We cut on orders. Everything that went on the barge was a definite [162] customer's order.

Q. You certainly never used more than five men loading barges?

A. Yes, I think there was a time when we had more than five men. We loaded one barge particularly and we finished the loading with two shifts, so on that particular barge there were more than five.

Q. It wouldn't average more than five on any one barge at any one time; that was an exceptional circumstance—normally five?

A. You quoted a figure of five. Four is nearer, normally four. Sometimes they would work half a day, sometimes two hours, sometimes all day. It would just depend on the logs we were sawing and

(Testimony of Eugene S. Hawkins.)

the filling of customer's orders, how it developed.

Q. Then four of your men were assigned to this particular type of work and, if I understand your testimony correctly, they worked when they were required to work on these barges but they never worked full time in performing work on the barges?

A. There never was four men assigned to work on the barges. They were picked arbitrarily.

Q. All right. Four men were picked arbitrarily to work on the barges, but they never did work full time?

A. No. [163]

Q. Is the same statement substantially true regarding the storage of lumber on barges, as his Honor indicated?

A. Yes.

Q. Four men part time?

A. Yes.

Q. What is the total number of employees of the Juneau Spruce Corporation?

A. We had a maximum of 211, I believe.

Q. That is here, is it, at Juneau?

A. Yes, I believe that is right.

Q. How many loggers do you employ?

A. About fifty.

Q. And how many at these other plants that you employ?

A. It varies from three to ten depending on when we get a shipment in. While we have available to store lumber in our yards—the permanent employees would be three or four.

Q. Would the three to ten include the office force?

A. Yes.

Q. Everybody?

A. Yes.

(Testimony of Eugene S. Hawkins.)

Q. 275 employees altogether. Would that be about correct?

A. I would say that would be; yes.

Q. In respect to the picket line that you mentioned, and you said there were four pickets there?

A. To start with; yes. [164]

Q. How long were four there?

A. I don't recall the exact number of days. It wasn't very long.

Q. A few days? A. Yes.

Q. How many thereafter? Two? A. Yes.

Q. I understand your plant faces on the main street of this city? A. Yes.

Q. And also faces the water front?

A. Yes.

Q. And has at least three entrances; is that correct?

A. You can enter the plant at a dozen different places.

Q. And that is along the 1100 feet you mentioned? A. Yes.

Q. Was that 1100 feet along the water front and the main street of the town? A. Yes.

Q. And you can enter the plant at a dozen places? A. Yes.

Q. The pickets, after the four, remained in front of the main gate; is that correct?

A. In front of where our time clock was.

Q. Would that be considered the main gate?

A. That would be considered the main gate; yes.

(Testimony of Eugene S. Hawkins.)

Q. Is that where they are now? A. Yes.

Mr. Andersen: I think that is all.

Redirect Examination

By Mr. Banfield:

Q. Mr. Hawkins, after these pickets were established, who came to work?

A. After the pickets were established on the 10th of April, our foremen and supervisor employees.

Q. Did any of the mill hands come to work?

A. Yes, some of the mill hands came to work.

Q. How many?

A. I think about possibly eight or ten.

Q. And did they go through the picket line?

A. Yes.

Q. Were they enough to carry on any operation in the mill? A. No.

Q. Did the mill operate thereafter while you were manager up to June 1, 1948? A. No.

Q. Was there any work performed?

A. Yes.

Q. What did it consist of? [166]

A. There was some lumber in the process of being processed at that time, and our retail yards were in need of flooring, and there were a few special items we had in our kiln, and these fellows manufactured that lumber into these specialty items preparatory to shipping them.

Q. After that work was completed what happened?



(Testimony of Eugene S. Hawkins.)

A. The only thing that was done was just maintenance and the likes of that at the plant.

Q. Now, Mr. Hawkins, when Mr. Andersen, counsel for the defendant I.L.W.U., was questioning you, he asked you as to the amount of funds that were paid longshoremen and absorbed by the Juneau Spruce Corporation, and you told him that, I believe, you didn't know how much it was?

A. Yes.

Q. Now, what is your understanding of what he meant by funds paid and absorbed by the Juneau Spruce Corporation?

A. Well, the only monies that was paid longshoremen that was absorbed by the Juneau Spruce Corporation was the tie-up charges. I don't know whether there was one vessel or two that moved up to our dock, and I assume that is what he had reference to.

Q. What would those tie-up charges amount to for each boat?

A. It is a small amount. I don't know how much it would amount to.

Q. Approximately? [167]

A. Ten, maybe fifteen or twenty dollars; I don't know.

Q. When was the first time the I.W.A. consented to this barge loading work being turned over to the I.L.W.U.?

A. In the early days of April, 1947—or eight, I mean.

(Testimony of Eugene S. Hawkins.)

Q. 1948?           A. Yes.

Q. Was that at a meeting at the mill?

A. Yes.

Q. Was that the meeting you referred to as happening just before the picket line went on?

A. Yes.

Q. Where the I.W.A. and longshoremen and the Company all had representatives present?

A. Yes.

Q. Was that the first time the I.W.A. consented to this work being assigned to the longshoremen?

A. Yes.

Mr. Andersen: You mean, within the knowledge of the witness?

Q. Yes. Within your knowledge?

A. Yes.

Q. Did the Company consent that this work be done by the longshoremen?           A. No.

Q. Did the Company insist that it be done by the I.W.A.? [168]           A. Yes.

Q. Were you the one that made that decision to insist on that?           A. Yes.

Q. And what were your reasons for so insisting?

Mr. Andersen: I object; it is incompetent, irrelevant and immaterial, may it please the Court.

The Court: Objection overruled.

A. Well, we had recognized the I.W.A. as the exclusive bargaining agent, and they had formally signed the contract, and it was agreed that was included in their scope and in their work.

(Testimony of Eugene S. Hawkins.)

Q. How long had the contract been in effect?

Mr. Andersen: The contract is the best evidence, may it please the Court.

The Court: Yes. It is already in evidence.

A. Am I to answer that question?

The Court: No.

Mr. Banfield: I will withdraw the question.

Q. Were there any other reasons?

A. Yes.

Q. What were they?

Mr. Andersen: To which I object on the grounds that it is immaterial and, may it please the Court——

The Court: The same ruling.

Mr. Andersen: Self-serving. [169]

A. Am I to answer?

Q. You may answer.

A. In the first place there were new officers for the I.W.A. that we were talking with, different than when we signed the contract, and these new officers weren't familiar with the interpretations and agreements made on that day and they had—they were under the impression that the contract——

Mr. Andersen: May it please the Court, I am going to object to this witness testifying to what anybody else had an impression of.

The Court: Yes; I think you will be limited to what was said.

Q. What did they say in that respect?

(Testimony of Eugene S. Hawkins.)

Mr. Andersen: To what respect?

Q. What did the I.W.A. say in respect to whatever you were going to talk about now?

Mr. Andersen: I submit that is speculative and conclusory.

The Court: I assume from what has gone on before that the question is directed to the witness' knowledge of what they said as to their understanding of the contract.

Mr. Banfield: That is right, your Honor, and why he refused to release them from the contract.

Mr. Andersen: His understanding of the contract. [170]

The Court: Not his understanding; the understanding they expressed. I think that is it.

Q. Go ahead.

A. They said they had been informed a contract which the longshoremen had with the Juneau Lumber Mills was still in effect for them to do that work. I told them that it wasn't in effect, if they ever had one. And that is the gist of what they said. I went on to tell my other reasons of why we wanted them to do the work.

Q. What were the other reasons?

A. That, if they gave this work of barge loading away so that we would have another union to bargain with, the electricians would demand the same thing, and the plumbers, and the machinists and teamsters, and we would have six or eight unions to deal with, and we desired to deal all with one

(Testimony of Eugene S. Hawkins.)

union; that, plus the fact that we had lived up to our side of the agreement and felt they were morally obligated to live up to their side of the agreement even though they had changed officers which of course didn't know what the other ones had done.

Q. Were there any other reasons why you didn't want to make an agreement with I.L.W.U.?

Mr. Andersen: That is—you are talking about Local 16?

Q. Local 16. [171]

A. Well, that is all I can recall right at this moment.

Q. How did you feel with respect to the value of the contract—I am trying to refresh your memory at this point—the value of the contract with the I.L.W.U.?      A. I don't get that.

Mr. Andersen: I don't get that either. Will you please repeat the question, Miss Reporter?

Court Reporter: "How did you feel with respect to the value of the contract—I am trying to refresh your memory at this point—the value of the contract with the I.L.W.U.?"

A. Well, the value of the contract with the I.L.W.U, from all I have seen since I have been in the Territory, would have been of little value. They agree to one thing and change it every little while to add more or——

Mr. Andersen: I move all this be stricken.

Mr Banfield: If the Court please, I will establish the purpose in the next question.



(Testimony of Eugene S. Hawkins.)

The Court: The motion is denied anyhow. You may proceed.

Q. Now, Mr. Hawkins, did your opinion of the value of the contract with the I.L.W.U. influence you in this decision not to let the I.W.A. be released from that part of the contract?

A. It very definitely had a bearing.

Q. Did the previous demands of the longshoremen—requiring [172] other further work than just loading barges—in the previous meetings have any effect upon your decision? A. Yes.

Q. How did that affect it?

A. To go back over them, at first they wanted all the work including carriers and lift trucks, and the work of removing the carrier blocks, and they seemed at every meeting to have a little revision of their demands so it wasn't consistent, and I assumed it would always be that way. That is what I have seen as long as I have been here.

Q. Mr. Hawkins, were these reasons given to the I.W.A.? A. Yes.

Q. At what time?

A. In this—about April—in the early days in April.

Q. At this meeting just before this picket line was established? A. Yes.

Q. Do you remember who it was who mentioned these things to the I.W.A.? A. Yes.

Q. And did that alter their position any?

Mr. Andersen: I am going to object to this line

(Testimony of Eugene S. Hawkins.)

of questioning, may it please the Court. It is strictly immaterial.

The Court: Well, I think it is already apparent [173] that it didn't alter their position.

Q. Who made these statements to the I.W.A. members at the meeting?

Mr. Andersen: To what?

Q. The I.W.A. members.

A. Mr. Banfield.

Mr. Andersen: What was the name?

A. Mr. Banfield.

Q. Was that in the presence of the I.L.W.U. members, or after they left?

A. After the I.L.W.U. members left.

Mr Banfield: That is all.

#### Recross-Examination

By Mr. Roden:

Q. Mr. Hawkins, the real reason why you didn't want to turn this work over to the longshoremen was that you expected the work to be done cheaper, wasn't it?

A. No. It would have been done cheaper no doubt, but it wasn't any bearing on it.

Q. I understood you to say a moment ago that the electricians would also come and ask for something; is that right?

A. That—and the plumbers and machinists.

Q. You had electricians there already, hadn't you?

A. Yes. [174]

Q. And they didn't ask for anything, did they?

(Testimony of Eugene S. Hawkins.)

A. No.

Q. And you had plumbers there, didn't you?

A. Yes.

Q. They hadn't asked for anything, had they?

A. No.

Q. You say the officers of the I.W.A. had changed between the time that the contract was signed and when you had these talks in April, 1948?

A. Yes.

Q. It wasn't in order to bind the officers that you made a contract, was it?

A. It wasn't what?

Q. You didn't want to bind the officers? In other words, you didn't want to bind Glen Kirkham by the contract made on November 3rd; you wanted to bind the union for the 200 or 250 men working there, didn't you?

A. Yes.

Q. And those 200 men told you and begged you to turn the work over to the longshoremen?

A. I presume it was their representative. The fellows who made the statements said they were representatives.

Q. You know several meetings were held in the early part of April, don't you, by the sawmill workers, the I.W.A.?

A. I don't know how many. [175]

Q. You were told about them?

A. I was told of at least one. I don't know how many more there were.

Q. You know 200 sawmill workers were present

(Testimony of Eugene S. Hawkins.)

who voted on turning the work over to the longshoremen?      A. I don't know how they voted.

Q. You weren't told how they voted?

A. I was told they agreed to give the longshoremen their work.

Q. Exactly. You were told that not only once but several times—at least twice; isn't that true?

A. Only once.

Q. Didn't you give them time off from work to attend a meeting at which this very question came up?

A. No; we didn't give them any time off.

Mr. Roden: That is all.

#### Recross-Examination

By Mr. Andersen:

Q. Just a few questions. Do you know the difference in the wage scale if the longshoremen loaded these barges and the amount of money you paid the men who loaded the barges—the amount per hour?

A. I know there is a difference.

Q. How much, do you know?      A. No.

Q. Would it be more or less?

A. The longshoremen get more.

Q. You mentioned another I.L.W.U. contract. To which contract did you refer?

A. The one they referred to. Originally they said that they had——

Q. Could I interrupt? You mean the contract between the Juneau Water-front Employers and

(Testimony of Eugene S. Hawkins.)

the Juneau Lumber Mills?           A. Yes.

Q. As I understand you, you had never operated under that contract at all, had you?           A. No.

Q. So you had no experience with that contract at all, had you?           A. No.

Q. That is the contract to which you referred when Mr. Banfield examined you; is that correct?

A. Yes.

Q. Do you know how long the Juneau Spruce Mills had done business with Local 16 under a collective bargaining contract?

Mr. Strayer: Do you mean Juneau Lumber Mills?

Q. Juneau Lumber Mills.           A. No.

Q. Had you made any inquiries?           A. No.

Q. You didn't inquire how long the longshoremen had done work for the Juneau Lumber Mills?

A. No.

Q. You had no personal experience with the contract at all?           A. No.

Q. I see. Now, you mentioned that the demands of the I.L.W.U. were inconsistent and you thought they might want to organize other portions of your plant; is that what you said?

A. Well, I didn't say organize other portions of our plant, but they were not consistent with their demands and it might carry back in that portion.

Q. Did I understand you said they were wanting more and more work?           A. No.

Q. Actually they were asking for less and less?



(Testimony of Eugene S. Hawkins.)

A. Yes.

Q. First they wanted to move the lumber from the last place of rest, from there to the boats or docks? A. Yes.

Q. Then, as I understand it, you said some member of Local 16 said he thought that was unreasonable and they modified their demands and asked you only for typically longshore work from the last place of rest or bull rail to the boat or dock; is that correct?

A. Partially correct. He didn't represent himself as being a [178] member of the local union.

Q. Is everything else substantially correct?

A. Yes.

Q. And from that point on all they requested was that you turn the work over to them from the bull rail out; that is correct, isn't it?

A. From the bull rail out; yes.

Q. But of course you insisted that the I.W.A. continue to do the work; isn't that correct?

A. Yes.

Q. And despite the fact that four men would only be used part time, you shut down the mill rather than hire these two or four longshoremen; is that true? A. No.

Q. You didn't give the work to the longshoremen? A. We didn't shut down the mill—

Q. You didn't give the work to the longshoremen? A. No.

Q. You knew, if you gave the work to the long-

(Testimony of Eugene S. Hawkins.)

shoremen, all the men would return to work and the mill would function at full blast, didn't you?

A. Yes, I presume.

Mr. Andersen: That is all. Thank you. [179]

Redirect Examination

By Mr. Banfield:

Q. Mr. Hawkins, this visit Mr. Andersen spoke of by a representative he spoke of of the local union, and you said he was not a representative of the local union, who did he represent?

Mr. Andersen: That is a conclusion, may it please the Court. He referred to Mr. Albright, referring to some six months before.

The Court: Regardless of what he referred to, if he can state of his own knowledge, he can so state.

Q. Who did he say he represented?

A. He said he represented I.L.W.U. International.

Mr. Banfield: That is all.

Mr. Andersen: That is all.

(Witness excused.)

## VERNE ALBRIGHT

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

## Direct Examination

By Mr. Strayer:

Mr. Strayer: We desire that the record show that Mr. Albright is a hostile witness and we reserve the right under the court rule to cross-examine and impeach his testimony if necessary. [180]

Mr. Paul: Your Honor, the defendants are an unincorporated association, and Mr. Albright is not a party, and our court rule goes only to the parties. A foundation must be laid first.

The Court: It is correct that a foundation must be laid for it, but there is no impropriety in apprising that the witness, regardless of whether he is a party or not, is hostile.

Mr. Strayer: Shall I proceed?

Mr. Andersen: Do I understand the Court is permitting the witness to be called as an adverse witness or simply as plaintiff's own witness?

The Court: He is plaintiff's witness.

Q. State your full name, please.

A. Verne Albright.

Q. Where is your home?

A. Ketchikan, Alaska.

Q. By whom are you employed?

A. International Longshoremen's & Warehousemen's Union.

(Testimony of Verne Albright.)

Q. That is the International with headquarters in San Francisco?      A. Correct.

Q. How long have you been employed by them?

A. Since the 10th of November, 1947.

Q. Do you have a title? [181]

A. Yes, sir.

Q. What is it?

A. I am classed as International Representative.

Q. What is your territory?

A. Alaska; the Territory of Alaska.

Q. Do you know the names of the officers of the International Longshoremen's & Warehousemen's Union for 1947?

A. In 1947 Harry Bridges was President; Bob Robertson—or R. J. Robertson—was First Vice President; Germain Bulcke was Second Vice President; and Louis Goldblatt was Secretary-Treasurer.

Q. Can you give us the same information for 1948?      A. The same officers.

Q. Are they the same today?

A. They were elected in 1947 for a term of office which runs for two years.

Q. Are they the same officers now then?

A. Yes.

Q. What officer do you report to, Mr. Albright?

A. I usually reported to Mr. Bulcke or Mr. Robertson. They are the head of the organization.

Q. The International Longshoremen's & Warehousemen's Union exercises jurisdiction over longshore workers in what part of the continent?

(Testimony of Verne Albright.)

A. The West Coast, Canada and Alaska. [182]

Q. Covering ports of the West Coast, Alaska and Canada? A. Most of them.

Q. Are there any on the West Coast that are not I.L.W.U.?

A. I think Tacoma, Washington, and I believe—you mean——

Q. Do you know what they are?

A. I don't know whether Port Angeles is.

Q. Aberdeen and Anacortes?

A. Anacortes may be.

Q. How about Olympia? A. I.L.W.U.

Q. Are you acquainted with Jack Berry?

A. I met him first this month of April in San Francisco.

Q. Do you know what position he holds with the I.L.W.U.?

A. International Representative in Canada.

Q. Where is his headquarters?

A. On Vancouver Island—Vancouver, Washington; I believe in Washington. Vancouver, B. C.

Q. Do you know what territory—British Columbia, is that his territory? A. Yes.

Q. And now, speaking particularly of Prince Rupert which is in British Columbia, is that in your territory or Mr. Berry's territory?

A. That is in Mr. Berry's territory.

Mr. Andersen: May it please the Court, at this time [183] I am going to object to any testimony regarding Prince Rupert. That is in Canada, and



(Testimony of Verne Albright.)

I understand these gentlemen are proceeding under the law of the United States which has no application in Canada, and I think we would be wasting time regarding that.

The Court: I think what happens in Canada is evidentiary. Objection overruled.

Q. Do you ever perform any duties yourself at Prince Rupert?

A. Occasionally I go over there. I have once.

Q. Were you served with a subpoena, Mr. Albright, to produce certain records?

A. That is right.

Q. Have you brought them with you?

A. I sent a constitution here and the directory of the International Union.

Q. Have you brought any other records with you?

A. I had no other.

Q. You were asked to bring with you——

Mr. Strayer: May I have that constitution there (addressing the Clerk of the Court)?

Mr. Andersen: I have the constitution. It is the same one.

Mr. Strayer: Yes. We have agreed or stipulated it is a correct copy of the constitution as it existed in 1947.

Mr. Strayer: April, 1947, I believe. He has sent this directory, but he has already given you the information.

The Court: You say it has already been stipulated that this is the constitution?

(Testimony of Verne Albright.)

Mr. Andersen: Yes.

Mr. Strayer: Yes. Does our stipulation, Mr. Andersen, show this was the constitution at all times since April 11, 1947?

Mr. Andersen: Well, there have been some amendments to that constitution at the last convention which was held last month, but I don't believe——

Mr. Strayer: Other than that, this is it?

Mr. Andersen: I don't believe you have to worry about it. I don't believe there was anything that would have a direct bearing on this. I think it had reference to particular things that we are not interested in.

Mr. Strayer: With that exception it is stipulated that this is the constitution in effect during all that time from 1947?

Mr. Andersen: Yes.

Q. Well now, Mr. Albright, you were asked to bring with you today correspondence and telegrams, or copies thereof, between yourself and the International, or any officer, agent or employee or representative of the International, which you wrote or which you received between October 1, 1947, and April 20, 1949, relating to any labor dispute [185] with the Juneau Spruce Corporation; did you bring any of that material?           A. I had none of them.

Q. Where is it?

A. It is my habit not to carry a file——

(Testimony of Verne Albright.)

Mr. Andersen: Just a minute. That assumes there is such.

Mr. Strayer: I don't think it is a violent assumption. Mr. Albright's affidavit is on record saying he did have——

Mr. Andersen: That is assuming something not in evidence.

A. When I receive a letter, I answer it or carry out the instruction, and destroy or tear it up and throw it in the waste basket at whatever hotel I am.

Q. You destroy copies?

A. I don't make copies.

Q. Carbon copies? A. No.

Q. Letters or telegrams connected with the International, you have destroyed?

A. That is general correspondence; yes.

Q. How much correspondence did you have with the International or any officer or agent of the International regarding this Juneau Spruce Corporation dispute? [186]

A. I have had some, not a great deal. I received some correspondence, too, and it was suggested I call on the mill one time. I had one letter from the International that they had discussed it down below and there might be a possibility of settlement.

Q. Not going into what you put in your letters, you did write the International concerning the dispute?

A. Just generally, that the dispute was in progress.

(Testimony of Verne Albright.)

Q. You made a report to them from time to time as to the progress of the dispute?

A. That is right.

Q. Do you make any copies of the reports you make to the International?

A. Any carbon copies, you mean?

Q. Yes.

A. The reports, no. My report is in the form of a letter, and I make one copy and send it to the International Office, 158 Golden Gate Avenue.

Q. So far as you know, Mr. Albright, are those reports or copies of those reports available in Alaska? A. Not to my knowledge.

Q. Are any of the letters or telegrams, or copies of those letters or telegrams, which you received from the International or any officer of the International, available anywhere in Alaska? [187]

A. Not to my knowledge.

Mr. Strayer: I think that is all, your Honor. However, we would like the right to recall this witness later if something develops during the testimony.

The Court: All witnesses are subject to recall.

Mr. Strayer: Any cross-examination?

Mr. Andersen: Not at this time.

(Witness excused.)

HORACE O. ADAMS

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Would you state your full name?

A. Horace O. Adams.

Q. Will you tell us what your occupation has been since the first day of March, 1948, whatever position you held?

A. I was agent for the Alaska Steamship at that time.

Q. How long did that continue?

A. Until the first of January this year.

Q. During that time did you have anything to do with the management of any dock in Juneau?

A. Yes. We took over the dock company, Alaska Dock and Storage Company.

Q. Do you mean the Alaska Steamship Company took it over? [188]

A. Yes. When I say "we," I mean the Alaska Steamship Company.

Q. What date was that, Mr. Adams?

A. I couldn't say right now, Mr. Banfield.

Q. In March, 1948, who operated the dock owned by the Alaska Dock and Storage Company?

A. That is a separate company, the Alaska Dock and Storage Company, and Mr. McDonald was the cashier and manager.



(Testimony of Horace O. Adams.)

Q. Is it your job to look after the boats, while in port, of the Alaska Steamship Company?

A. Yes, sir.

Q. I will ask you if you have any knowledge of a shipment of material which arrived at Juneau on Tuesday, March 16th, on the "Baranof" and was assigned to the Juneau Spruce Corporation?

Mr. Andersen: March 16th, what year?

Q. 1948.

A. I remember the incident. I wrote a letter concerning it.

Q. Tell us what happened with respect to that assignment during that time and after it arrived.

A. Our consist wire—that is a wire out of Seattle—I think it was 69 or 70 tons, I am not sure, for the Juneau Spruce Corporation, and it was my prerogative whether I sent the ship to the Juneau Spruce Dock or discharged the freighter at our dock. In other words, it wasn't in the sailing orders of the captain to go to that dock. Anything over 50 tons I could send to the Union Oil or Standard Oil or any other dock, so I called the Spruce Mills and told them how much freight they had and told them we would discharge at their dock.

Q. Go ahead.

A. And then I think the ship arrived at three or four in the afternoon; I am not sure of the time; so I made arrangements to order the longshoremen for the discharge at the Spruce Mills Dock.

Q. Where would those longshoremen be working for the Steamship Company?

(Testimony of Horace O. Adams.)

A. All I hired is the sling tenders.

Q. Did they work in the hold or on the dock?

A. On the dock.

Q. What was that work?

A. To hook on and hook off the slings.

Q. Does the Steamship Company always pay for that service?      A. Yes, sir.

Q. Even though they were working on somebody else's dock?

A. We pay the slingmen.

Q. Go ahead. What happened after you ordered these men?

A. When I ordered the men, I went out to the longshore boss and told him how many men we would need down there. He was with the Chief Mate, Mr. Buckler. He said we would work two gears, so I ordered four sling tenders, and the [190] longshore boss told me, "I might as well tell you right now we are not going to take any freight off at the lumber mill."

Q. Who was the longshore boss?

A. Tony Wukich.

Q. Do you know if he was an officer of Local 16?

A. No, I don't.

Q. What did you do after that?

A. Well, I called Mr. Hawkins and I told him what I was up against, and I said——

Mr Andersen: I object. It is hearsay.

The Court: He is not attempting to relate now what somebody else told him.

(Testimony of Horace O. Adams.)

Mr. Andersen: It is still hearsay and also, as I see it, immaterial.

The Court: I don't apprehend that the witness needs to state what he said, but rather what was done.

Q. Go ahead, Mr. Adams. What did you do? You contacted Mr. Hawkins?

A. I called him on the phone and said, "We can't delay the ship." My version was to put the freight off at our dock, although it would be a terrible expense to the Spruce Mills. He said, "That is up to you."

Mr. Andersen: I move that be stricken as hearsay.

Mr. Banfield: If the Court please, what Mr. Hawkins, [191] told him in a conversation is not hearsay. If Mr. Hawkins said what somebody else said—he is one of the parties to this suit.

The Court: I think it is hearsay. He should state what was done rather than conversation leading up to the doing of it.

Q. Where was the freight unloaded, Mr. Adams?

A. The freight was discharged at our dock.

Q. Now, was there ever any other time that you had any dealings with the Juneau Spruce Corporation and the longshoremen involving shipments for the Juneau Spruce Corporation?

A. I don't know just what you mean. We had lots of dealings. You mean after this trouble?

Q. Yes.

A. Yes. They were desperately in need of—

(Testimony of Horace O. Adams.)

Mr. Andersen: I move that be stricken. The characterization is a conclusion of the witness.

Mr. Banfield: That is correct. Whether they were in need of something makes no difference.

Q. Tell what they did.

A. They offered a shipment of flooring for the westward, finished lumber.

Q. Do you remember about what size of shipment it was?

A. I don't know. It was one or two carlots, ten or fifteen carryall lots. [192]

Q. After they offered this lumber, what else did they do?

A. Well, at that time I had to phone Seattle to find out if I could get space or if I could accept it. Our superintendent said, "As a public carrier, you can't refuse it."

Mr. Andersen: I object.

The Court: So far as the conversation, it is not material.

Q. Mr Adams, just tell us whether or not you agreed to accept it?

A. He said as a common carrier we had to accept it

Mr. Andersen: I move that be stricken, may it please the Court, as hearsay.

The Court: I don't know whether he said that or as a common carrier——

A. Your Honor, my instructions over the phone were that.

(Testimony of Horace O. Adams.)

Mr. Andersen: I move that be stricken as hearsay. That is hearsay.

The Court: Objection overruled.

Q. State the instructions.

A. My instructions were that as a common carrier we had to accept shipments on the dock.

Mr. Andersen: Again I move that be stricken.

The Court: Motion denied.

Q. Mr. Adams, tell us what happened to the lumber.

A. They brought the lumber to the dock. It was signed for by [193] Agnes Dobner who worked on the dock as cashier, who didn't work for us. She worked for the Alaska Dock and Storage Company, as our agents.

Q. In other words, that material was for shipment on an Alaska Steamship Company boat?

A. Yes, sir.

Q. Tell us what happened then?

A. The steamer came in at five or six o'clock and was going out that evening.

Mr Andersen: I would like to interpose an objection, another objection similar to my objection to Mr. Hawkins' testimony that this is incompetent, irrelevant and immaterial in so far as the International is concerned.

The Court: You mean—you better identify just what testimony you are referring to.

Mr. Andersen: At the conclusion of Mr. Hawkins' testimony I made a motion to strike on



(Testimony of Horace O. Adams.)

grounds previously discussed—no foundation and it is not binding on the International.

The Court: You are renewing that?

Mr. Andersen: No. So far as this witness' testimony is concerned, I want to move at the proper time, move to strike.

The Court: It may be admitted subject to the ruling.

Q. Go ahead.

A. We discharged the northbound cargo and loaded out the westbound [194] cargo, and I said, "It is time to load the lumber," and the longshoremen wouldn't load it.

Mr Andersen: I am going to move that be stricken as a conclusion of the witness and not a proper foundation.

The Court: He should state what was done or not done rather than what——

A. They didn't load the lumber from the Juneau Spruce for the westward.

Q. Who refused to load the lumber?

A. The longshore boss at the time, I think, was Joe Guy.

Mr. Andersen: I will object to that as not binding upon the International and not binding upon Local 16.

The Court: Objection overruled.

Q. Was Mr. Joe Guy an officer of the Union, do you know?

A. He was the boss at that time.

(Testimony of Horace O. Adams.)

Q. Boss of the crew, you mean? In your dealings with the longshore crews who do you deal with?

A. I deal with whoever is the boss at that time.

Q. That is customary, is it? A. Yes.

Q. And is that the way you operate under your agreement of employment? A. Yes.

Q. Now, what did you say to Mr. Guy?

A. Well, it was getting late. I said, "We are ready to load [195] lumber." He said, "We are not going to load any lumber. It went through a picket line."

Mr. Andersen: I object.

The Court: I think——

Mr. Strayer: Mr. Guy was a member of Local 16, one of the parties. The reason he gave for refusing to load lumber would be admissible as an admission of the party and explaining the act of Local 16 in refusing to load the lumber.

Mr. Andersen: I don't believe any unincorporated association will be held responsible for acts of a member. If a member gave a mistaken order to refuse or to do something, then by a mistaken order they would be held liable for anything he might say or do. These gentlemen understand the foundation that is necessary. They haven't laid a foundation. Mr. Guy is simply a member.

The Court: If he was down there exercising authority, the presumption would be that he had it. The objection is overruled.

(Testimony of Horace O. Adams.)

Q. What happened to this cargo of lumber? Did you answer the question—what did Mr. Guy say?

A. He said they would not load the lumber because it went through the picket line.

Q. What did you do after that?

A. We pulled the gangplank and sailed the ship.

Q. Before you sailed the ship did you have a conversation [196] with Mr. Druxman?

A. Yes.

Q. Was this conversation after the conversation with Mr. Guy?

A. It was after that—with him.

The Court: With whom?

A. Bob Druxman.

Q. The first time you talked to Mr. Guy, you testified it was in the presence of Mr. Buckler?

A. He was first mate.

Q. Was he present when you talked to Guy about this second incident?

A. Yes.

Q. Was Mr. Druxman there the first time?

A. No.

Q. Was he present the second time?

A. No.

The Court: I am confused between Buckler and Druxman.

A. Buckler was the first mate, and Druxman was the K.I.N.Y. reporter.

Q. After you talked to Mr. Guy in the presence of Mr. Buckler and before the ship sailed, did you have a conversation with Mr. Druxman?

(Testimony of Horace O. Adams.)

A. Yes.

Q. What was Mr. Druxman's occupation at that time? [197]

A. He was the reporter for K.I.N.Y. I think he was jointly with the "Empire" and K.I.N.Y.

Q. And what did you and Mr. Druxman do, if anything?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial.

Mr. Banfield: It depends upon what he and Mr. Druxman did. If he had another conversation with the longshoremen, it wouldn't be immaterial.

The Court: Objection overruled.

Q. What did you and Mr. Druxman do, Mr. Adams? A. Mr. Druxman asked me——

Mr. Andersen: Just a minute. I am going to move that that be stricken.

The Court: Yes; conversation will be stricken.

A. It is the only way to bring it out.

The Court: Since there is an objection, you can't state what was said. You will have to say what was done.

Q. What did you and Mr. Druxman do, Mr. Adams?

A. To get concrete evidence for the news and the paper that the lumber was refused and not taken, we went——

Mr. Andersen: I object.

Mr. Banfield: We will show the purpose.

The Court: Objection overruled.

(Testimony of Horace O. Adams.)

Q. Go ahead.

A. We went to this Joe Guy, and I said, "Will you load the [198] lumber?" And he said, "No, absolutely not."

Mr. Andersen: The same objection to this also, may it please the Court.

A. He said it anyway. I don't care.

Mr. Andersen: The same objection; incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Q. Was the lumber loaded aboard that boat?

A. No.

Q. What happened to it?

A. It was hauled back to the mill the next day.

Q. Do you remember the date of that, Mr. Adams, or about when it was with relation to the establishment of the picket line down at the mill?

A. I think it was either the day before or the day after the picket line was established, or either that day—I don't know. I wrote some letters, Mr. Banfield. It was on the date of those letters. They should show when it happened.

Q. Do you have a copy of the letter you wrote?

A. I think so.

The Court: Is the purpose of this to establish the exact date?

Mr. Banfield: Yes, your Honor.

The Court: Is that so very important? He said it was within a day or two of the picket line. Is it absolutely [199] necessary to establish it?



(Testimony of Horace O. Adams.)

Mr. Banfield: I want to establish that that is not the time it was. He has a letter.

A. This letter was written May 6th relative to the "Baranof," Voyage 21, Juneau Spruce Corporation, April 27.

Q. Was the date the 27th or——

A. This is a letter in which I explained what happened. It is kind of a long letter, three pages.

Q. Which sailing of the "Baranof" was it?

A. Voyage 21, April 27th.

Q. Does the 27th mean the date it arrived in Juneau?

A. No. Out of Seattle.

Q. The date it left Seattle? A. Yes.

Q. And how many days later approximately did it arrive in Juneau?

A. Three days later, the 30th.

Mr. Banfield: That is all.

Mr. Andersen: No questions.

(Witness excused.) [200]

## HENRY GREEN

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

### Direct Examination

By Mr. Banfield:

Q. Will you state your name please?

A. Henry Green.

(Testimony of Henry Green.)

Q. Were you subpoenaed to testify this afternoon?  
A. I was.

Q. What is your occupation at the present time?

A. Agent for the Alaska Steamship Company.

Q. At Juneau?  
A. At Juneau.

Q. Tell me what was your occupation during the month of August, 1948?

A. I was agent for the Alaska Steamship Company from about the 6th of August on.

Q. Until the present time?

A. Until the present time.

Q. Now, in connection with your duties did you also have anything to do with managing a dock after August 6th?

A. Yes. Agent for the Ketchikan Wharf Company?

Q. And who was the Ketchikan Wharf Company?

A. It is a dock company operated by the Alaska Steamship Company.

Q. A subsidiary corporation? [201]

A. Yes.

Q. What dock do they operate?

A. It is known as the Alaska Dock in Juneau.

Q. Is that the same dock that was operated just before that in May, 1948, by the Alaska Dock and Storage Company?  
A. Yes.

Q. That is the dock where the Alaska Steamship boats have landed for years; is that right?

A. That is right.

(Testimony of Henry Green.)

Q. Mr. Green, did you have any requests in August, 1948, from the Juneau Spruce Corporation to ship any lumber by Alaska Steamship boats?

Mr. Andersen: I object to that as hearsay, incompetent, irrelevant and immaterial.

The Court: You can answer that yes or no.

Q. Did you have any such requests?

A. Yes.

Q. What was the request?

Mr. Andersen: I renew the objection.

The Court: Yes; I think that anything calling for conversation would have to be excluded, and it seems to me your purpose might just as well be served by eliminating it. Have him state what was done.

Mr. Banfield: There was nothing done except a particular conversation in this particular case.

The Court: By whom?

Mr. Banfield: Juneau Spruce Corporation and Mr. Green who tried to comply with the request, and the longshoremen who wouldn't permit him to comply with the request, and he reported to the Juneau Spruce. No lumber was moved, or nothing else was done.

The Court: If it is necessary to show what the defendant did, why it might be admissible, but ordinarily that can be shown without bringing out the details of the conversation.

Mr. Banfield: I am afraid, if the Court please—we have to show what the request was, and the longshoremen——

(Testimony of Henry Green.)

The Court: You may proceed.

A. What was the question?

Q. What was the request made by the Juneau Spruce Corporation at that time?

Mr. Andersen: The same objection.

The Court: I have already ruled on it. Go ahead.

A. They requested to ship some lumber either to Seattle or to the westward.

Q. And what did you do pursuant to that request?

A. I informed them that I would be glad to handle their lumber.

Mr. Andersen: I object to all this line of conversation as immaterial and hearsay. [203]

The Court: I still think he could answer that he couldn't do it because the defendant presumably refused and without stating conversation.

Q. Did the Alaska Steamship Company ship this lumber? A. Did the——

Mr. Andersen: I object to any reference of lumber. There is no testimony——

Mr. Banfield: The witness testified the Juneau Spruce Corporation requested——

Mr. Andersen: I thought you had sustained my objection.

The Court: You may answer the question.

Q. Did you ship the lumber on the boat?

A. No.

Q. Why didn't you ship the lumber on the boat?

(Testimony of Henry Green.)

Mr. Andersen: I renew the same objection. It is hearsay, incompetent, irrelevant and immaterial.

The Court: It seems to me it goes to his personal knowledge. Objection overruled.

A. What was the question?

Q. Why didn't you ship the lumber on the boat as requested?

A. Because the longshoremen notified me they would not load it.

Mr. Andersen: I move the answer be stricken also as hearsay, may it please the Court, and no showing has been [204] made in connection with the defendants.

The Court: I think the answer should be followed up by showing who it was.

Mr. Banfield: That is exactly what I can do.

Q. Who was it that told you that they would not ship the lumber?

A. The delegate, Joe Guy.

Q. What was his position with respect to Local 16?

A. You mean, what position did he occupy in the Local?

Q. Yes; or in his dealings with you?

A. At that time he was a member of the Labor Relations Committee of the Union and the delegate and—that is all.

Q. Was he the man you would customarily deal with at that time on such matters?           A. Yes.



(Testimony of Henry Green.)

Q. Now, Mr. Green, if this lumber had been shipped, what would the longshoremen have done with it? What would have been their duties?

Mr. Andersen: I object to that as immaterial, may it please the Court.

Mr. Banfield: It is to show, your Honor, what they refused to do.

The Court: I presume they would put it aboard the ship.

Mr. Banfield: That is all he has to say. [205]

Q. What would they do?

A. If it was loaded at our dock, they would have loaded it aboard the ship. At the Spruce Mill they would have handled it if they worked two hatches aboard ship, or the slingmen would have handled it.

Q. If that was your job, who moved it from the warehouse to the face of the dock?

A. The longshoremen.

Q. And who attached the slings?

A. The longshoremen.

Q. And who stowed it in the hold if they worked one hatch?

A. The sailors.

Q. And if they worked two hatches?

A. The longshoremen, presumably.

Mr. Andersen: I move that be stricken as purely speculative, may it please the Court.

The Court: Yes; it seems quite speculative and not what has been done or anything of that kind.

Q. Was there any other way this lumber could

(Testimony of Henry Green.)

have been loaded aboard ship except by the use of these longshoremen?

A. That is a hard question for me to answer.

Q. You can explain it as you see fit.

A. Not and comply with the terms of our agreement with the longshoremen.

Mr. Andersen: I move that be stricken as not responsive. The question was—was there any other way to load it? It has nothing to do with contracts.

The Court: Objection overruled.

Q. Did you have a contract with these longshoremen to do that particular type of work?

A. Yes.

Q. Was it in force when this happened August 14, 1948? A. Yes.

Q. I believe it was on or about August 14, 1948; was it?

Mr. Andersen: I move that be stricken. The contract would be the best evidence if it is in force.

The Court: Objection overruled. It is a purely collateral matter. It is to show their method of loading it. A. What was the question?

Q. This incident you spoke about when you contacted Mr. Guy and he refused to load the lumber, when was that?

A. The first part of August.

Q. What year? A. Last year.

Q. Do you remember the words that were used by Joe Guy when you asked him to do this—

(Testimony of Henry Green.)

Mr. Andersen: Same objection.

Q. And he refused?

Mr. Andersen: Same objection, may it please the Court. [207]

The Court: Objection overruled.

A. He said, as a slang term, "No soap," I believe.

Mr. Banfield: That is all. You may cross-examine.

Mr. Andersen: No questions.

(Witness excused.)

(Whereupon Court recessed for ten minutes, reconvened as per recess, with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

### EUGENE H. CARD

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Banfield:

Q. State your name please.

A. Eugene H. Card.

Q. Where do you reside?

A. Coos Bay, Oregon.

Q. Do you have any relationship with the Juneau Sprue Corporation?      A. I do.

Q. What is that?

A. Labor Relations Adviser.

(Testimony of Eugene H. Card.)

Q. Mr. Card, have you had any occasion to have any meetings as such Labor Relations Adviser with Mr. Hawkins in the [208] presence of a Union committee here in Juneau?      A. I have.

Q. Tell me the first such incident.

A. The first meeting was October 23, 1947.

Q. And with whom did you meet and about what time of the day?

A. The meeting was at 2:00 o'clock in the afternoon. Those present were: Mr. Hawkins and myself for the Company; and a Mr. George Ford, a Mr. McCammon and a Mr. Burgo, representing the I.L.W.U.

Mr. Andersen: Local 16, I assume?

Q. Were they representing the International or the Local?

A. I believe they were representing the Local.

Q. And who was the spokesman for the Company at that meeting?      A. I was.

Q. And who was the spokesman for the I.L.W.U., Local 16?

A. Mr. Ford was the principal spokesman.

Q. Just tell us what occurred at that meeting and what was said and done.

A. Mr. Ford opened the meeting by stating that they wanted us to sign a contract with the Local. I asked him if they represented any of our employees. He said they didn't; they didn't have anybody working at the plant at the time; but we had to sign a contract with them just the same.

(Testimony of Eugene H. Card.)

I told them we were negotiating with the I.W.A. and recognized the I.W.A. as bargaining agent for all our employees [209] at the plant and couldn't and wouldn't sign a contract with any other union. And Mr. Ford said, "Well, if you don't sign a contract, you will never get that bargeload of lumber unloaded when it gets down to Seattle." They started out the door. Then Mr. McCammon turned around and said, "Wait a minute, fellows." He called the other two back in. He said, "How about paying for those men we sent down here?" I asked him what men he was talking about. He said that they had sent down a couple of men to pile carrier blocks. I told him we hadn't ordered anyone to pile those blocks, that we only paid the men we employed directly and didn't pay men sent by outsiders and, if they were going to be paid, they would have to be paid by the longshoremen if they were the ones that sent them down. He said, "We will see about that," and they left.

Q. Did you have any other meetings that same day?  
A. Not that same day; no.

Q. Well, that evening did you have any meeting, or the next day, or when was the next meeting with the Union?

A. I didn't have any further meeting with the I.L.W.U.

Q. I mean with any other union?



(Testimony of Eugene H. Card.)

A. Yes; about two days later I had a meeting with the I.W.A. committee.

Q. Who was present at that meeting?

A. Glen Kirkham, Dan Livie, Chris Lee, Tim O'Day and one [210] other committee member from the I.W.A., and Mr. Hawkins and myself from the Company.

Q. You think that would be about October 25th?

A. About that date.

Q. Tell me what was done at that meeting.

A. We discussed the proposed working agreement, and this was the agreement——

Mr. Andersen: We object to this, your Honor, as hearsay, may it please the Court.

The Court: It is the same kind of hearsay that has been going in about all these discussions. Objection overruled.

Q. Go ahead.

A. We discussed the working agreement that I had revised and talked about the meaning of various clauses, and the I.W.A. committee said that they would like to have a little time to study it over a little further, and we said that would be all right, so they took it with them, and a few days later they asked for another meeting.

Q. And who was present at this meeting a few days later?

A. The same committee, the same persons that had been present on the 25th.

Q. And what happened at that meeting?

(Testimony of Eugene H. Card.)

A. We discussed the proposed agreement further and made some changes in the wording of it in a few places, bringing it into conformity with the understanding on both sides, and it was agreed that the contract would be typed up and signed.

Q. Was there any discussion at that meeting regarding the union recognition clause which was later embodied in the agreement of November 3, 1948—1947?

A. At one or the other and perhaps both meetings with the I.W.A. there was discussion on that point; yes.

Q. Tell us what the discussion was.

A. Well——

Mr. Andersen: I assume my objection runs to all of this, your Honor?

The Court: As I see it, since this is a meeting with the I.W.A., it wouldn't appear to be material to bring out the details of the discussion, would it?

Mr. Banfield: If the Court please, only for the purpose of showing what was intended under this agreement, and later to show how it operates.

The Court: I think he can state what was intended by the agreement without relating the discussion.

Mr. Banfield: Very well.

Q. Tell us what was agreed regarding the union recognition clause.

A. It was agreed the union recognition clause would cover all employees of the Company regard-

(Testimony of Eugene H. Card.)

less of what work they were [212] doing, with the exception of those named as being specifically excluded.

Q. Was there mention made of an agreement made as to whether or not this clause covered the barge loading which has been testified was going on on October 23rd?

A. Yes, it was. It was understood by the two committees, the I.W.A. committee and the Company committee, that barge loading was included as all other work in the plant.

Mr. Andersen: I renew my objection. It is his understanding. It is hearsay.

The Court: It isn't his understanding. The witness is testifying to what they interpreted or what interpretation they agreed on that that clause should receive. The motion is denied.

Q. Was any understanding or agreement reached with the approval of the I.W.A. International?

Mr. Andersen: Same objection.

A. There was.

Q. And what was the agreement in that respect?

The Court: Well, how could they bind the International by their agreement?

Mr. Banfield: If the Court please, they couldn't. The only question was whether or not they had consulted with their International and were doing it in accordance with their policy. [213]

The Court: I thought you meant the Longshoremen's International.

(Testimony of Eugene H. Card.)

Mr. Banfield: Oh, no. The I.W.A. International.

The Court: You may answer.

A. Will you read the question please?

Court Reporter: "And what was the agreement in that respect?"

A. Well, the agreement was that the recognition clause, that the barge loading was covered in the recognition clause, as well as all the other work, with the knowledge and the understanding of the I.W.A. International Office.

Q. It was done with their approval?

A. Yes.

Q. Now, when was this agreement actually typed up?

A. Between about the 29th of October when we had our last negotiating meeting and the 3rd of November when the agreement was signed.

Q. Do you remember, Mr. Card, when Mr. Hawkins left town about that time?

A. He left right after our last meeting with the I.W.A., about the 29th or 30th; I think about the 30th of October.

Q. Did he leave any instructions about signing this agreement?

A. He did.

Q. What were they?

A. My instructions were to sign the agreement in his name. [214]

Q. And was that done?

A. It was.

Q. On what date?

A. November 3, 1947.

(Testimony of Eugene H. Card.)

Q. After that what did you do, Mr. Card?

A. I went back to Coos Bay.

Q. And when did you come back to Juneau again?      A. April 13, 1948.

Q. And would you tell us what the conditions were at the plant at that time?

A. There was an I.L.W.U. picket line at the plant, and the mill was not in operation.

Q. Have you any idea how many men were working there at that time?

A. How many men were actually working?

Q. Yes.      A. At the plant?

Q. And in the office and so forth; what classification of men were there?

A. Well, on the 13th I think there were only watchmen and office employees working at that time.

Q. Now, do you know the policy of the Juneau Spruce Corporation with respect to hiring long-shoremen?      A. I do.

Q. What is that policy? [215]

A. It is to hire them as well as anyone else if they apply for work in the mill and there is work that they can handle.

Q. And if they should apply for work and work there in the mill, who would be their bargaining representative?      A. I.W.A.

Q. Could they bargain individually with the employer?

A. No. They don't bargain individually down there.



(Testimony of Eugene H. Card.)

Q. Could the employee come in and ask for a raise—that is all I want to know?

A. No. The I.W.A. is the collective bargaining agent.

Q. I am not speaking of collective bargaining, but, if a man individually would like a raise in pay can he come in and ask the boss for a raise?

A. No. The Union is his bargaining agent.

Q. Would the Union bargain for all of them?

A. Yes.

Q. Does the Company have any objection to the longshoremen attending the slings, attaching the slings, of commercial vessels which are loading lumber to be shipped from the Company's dock?

Mr. Andersen: I think I will object to this line of questioning. It is purely cumulative. They have gone over the same matters. It is just cumulative.

The Court: I have lost the form of the question. In view of the objection, will you read the question?

Court Reporter: "Does the Company have any objection to the longshoremen attending the slings, attaching the slings, of commercial vessels which are loading lumber to be shipped from the Company's dock?"

The Court: Objection overruled.

A. No. We have never objected because we have nothing to do with it.

Q. Does the Company hire those men?

A. No.

(Testimony of Eugene H. Card.)

Q. What is the Company's objection to hiring longshoremen to load barges?

Mr. Andersen: The same objection, may it please the Court. It is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. Because we have an agreement with another union under which that work is covered. We can't break our agreement with the I.W.A. and take the work away from them and give it to somebody else just because they come along and ask for it.

Q. Mr. Card, April 13th when you arrived here were the I.W.A. willing to allow the longshoremen to do this work?

A. I think there might be some question about that.

Q. Well, what do you know of your own knowledge as to whether they did, or how would you qualify it? [217]

A. I talked to Mr. Peterson, who was then the Vice President of the I.W.A., and to Mr. Gustafson, who was then Secretary of the I.W.A., and they told me——

Mr. Andersen: Just a moment. I am going to object to that as hearsay, may it please the Court.

The Court: I think that conversation should be eliminated as far as possible.

Q. What was the position of the I.W.A., or factions of it if there was more than one position? Just tell us what the facts were.

(Testimony of Eugene H. Card.)

Mr. Andersen: That calls for an opinion of the witness, may it please the Court.

The Court: Objection overruled.

A. I was told that——

Mr. Andersen: This is hearsay, may it please the Court.

The Court: Just eliminate conversation as far as you can and state what the decision was or what the outcome of the discussion was, or something of that sort, rather than to relate the details of the conversation.

A. The decision, as I understand the situation, your Honor, the decision was that there was apparently an agreement between the longshoremen and the Mill Company.

Q. Which mill company?

A. The Juneau Spruce Corporation. And the I.W.A. was willing [218] to give up that work in view of what they understood was this agreement between the longshoremen and the mill, the Juneau Spruce Corporation.

Q. How did they claim this agreement had come into effect?

Mr. Andersen: The same objection. It is hearsay and calling for a conclusion and opinion of the witness.

The Court: You might ask him to what agreement they referred.

Q. To what agreement did they refer?

(Testimony of Eugene H. Card.)

A. The I.W.A. men were referring to a supposed agreement they were told by the longshoremen was in effect.

Q. Between whom?

A. Between I.L.W.U. 16 and the Juneau Spruce Corporation.

Q. How did that supposed contract come into effect with the Juneau Spruce Corporation.

A. That I couldn't answer. There wasn't any such contract, and I couldn't tell you how it came into effect; there wasn't any.

Mr. Andersen: I object to that as a conclusion and opinion of the witness. I think it is going deep into the hearsay field.

The Court: He merely answered that he doesn't know how the idea gained ground that there was such a contract.

Mr. Banfield: I don't believe that is what he answered, your Honor. [219]

Q. Did they tell you how this contract was supposed to have come into effect between the Juneau Spruce Corporation and the I.L.W.U.?

A. No. They just understood that there was such a contract. They had been told by the longshoremen that there was such a contract.

Q. Did you tell them that there wasn't?

A. I certainly did.

Q. Did you know at that time what particular contract they were referring to?      A. No.

Q. Now, were there any other reasons why the

(Testimony of Eugene H. Card.)

Juneau Spruce Corporation was not willing to make an agreement with the I.L.W.U.?

Mr. Andersen: I object to that as immaterial, may it please the Court.

The Court: Objection overruled.

Mr. Andersen: And calling for a conclusion and opinion of the witness.

A. Well, yes. You can't just go around and make contracts with anybody that comes along. We had a contract with a union that covered all our employees.

Q. Did you have any objection to making two contracts, with two organizations?

A. Yes, of course. [220]

Q. What were the reasons for it?

A. You can't take work away from one group of men and give it to somebody else.

Mr. Andersen: I object to that as a conclusion and opinion of the witness.

The Court: Motion denied.

Q. If you took the work away—did it make any difference to you who did the work? Who did you want to do the work?

Mr. Andersen: That is a complex question.

Q. Did it make any difference to the company?

A. It made a difference in this respect; yes. We couldn't permit the I.W.A. to violate their agreement any more than they would permit us to violate ours.

Q. Of course people can call off an agreement if they want to? A. Yes.



(Testimony of Eugene H. Card.)

Mr. Andersen: I object.

Q. Why were you unwilling to void the agreement with the I.W.A. and draw up another excluding barge work?

A. If we had let the agreement go then and sign with the longshoremen, the next day some other union would be down and say, "We want an agreement covering machinists," or, "We want an agreement covering painters," or, "We want an agreement covering carpenters." We weren't just going to open road to everyone in the Territory coming in and covering [221] small groups of people.

Q. Was there any other reason you can think of now?      A. None that I know of; no.

Q. Do you know, Mr. Card, how long the mill was closed down?

A. It was closed from the 10th of April to the 19th of July.

Q. And during that time was there any logs sawed for production of lumber?

A. Not up to the 19th of July; no.

Q. Did any of the I.W.A. men to your knowledge participate in the picket line?

A. Not to my knowledge.

Q. Have there been any longshoremen or members of Local 16 working for the corporation after October 23, 1947?

A. Not as long as to my knowledge.

Q. Could there have been some working in the mill just as general mill hands?

(Testimony of Eugene H. Card.)

A. There could have been.

Q. Mr. Card, was there any loading of barges with lumber for shipment to the United States after the picket line was established?

A. I don't recall any being loaded after the picket line was established.

Q. How long were you here after April 13th?

A. Until the 20th of May.

Q. Was there a barge being loaded at the time you arrived [222] here on April 13th?

A. It had just been loaded and, I believe, left here that day.

Q. The same day you arrived?

A. No. I think it left here the morning the picket line was put on the plant.

Q. Mr. Card, does the Juneau Spruce Corporation maintain any office in Portland?

A. Not to my knowledge.

Q. Do you know the President of the Corporation? A. Yes.

Q. What is his name? A. H. F. Chaney.

Q. Does he have a private office of his own in Portland? A. Yes, he does.

Q. Is it established just for doing business with the Juneau Spruce Corporation or in connection with other business that he does?

A. It is in connection with other business.

Q. Is that the only office that might be termed an office of the Juneau Spruce Corporation in Portland?

(Testimony of Eugene H. Card.)

A. That is the only one I can conceive of, and I certainly wouldn't call that a Juneau Spruce Corporation office.

Mr. Banfield: I think that is all. [223]

Cross-Examination

By Mr. Roden:

Q. Mr. Card, how long have you been Personnel Officer for the Company?

A. Since about the middle of April, 1947.

Q. And did you occupy a similar position before that?

A. No. There wasn't any Juneau Spruce Corporation.

Q. Not necessarily Juneau Spruce; but any other company?

A. Yes.

Q. For how long did you occupy this position?

A. With the other company?

Q. Yes.

A. I have been employed by the Coos Bay Lumber Company since April 1, 1945.

Q. And prior to that time what was your occupation?

A. Oh, between the 1st of March, 1942, and April 1st—it was 1946 I went to work for Coos Bay Lumber Company—between March 1, 1942, and April 1, 1946, I was employed by associations representing employers in the lumber industry in the matter of labor relations.

Q. Have you ever represented any unions?

(Testimony of Eugene H. Card.)

A. I have.

Q. For how long a period of time?

A. From the 8th of June, 1937, to the 28th of February, 1942.

Q. So practically all the time since [224] the passage of the Wagner Act, as it has been called, you have been engaged more or less in labor relations and are pretty well informed about the law as exemplified in the Wagner Act and the Taft-Hartley Act?

A. Yes; I feel I am rather familiar with the law.

Q. You are the gentleman who prepared the contract which was executed on the 3rd of November between the Juneau Spruce Corporation on the one hand and the I.W.A. on the other; that is true?

A. I didn't prepare it all by myself; no.

Q. You scrutinized it in all respects?

A. Yes.

Q. It was submitted to you for careful consideration?  
A. Yes; that is right.

Q. And you did?  
A. Yes, sir.

Q. And you did your best to make a good contract?  
A. Yes, sir.

Q. This recognition clause, so called, where did you get that from?

A. It is the same as in the previous contract the I.W.A. had with the Juneau Lumber Mills.

Q. That is right?  
A. Yes.

Q. Do you remember the date of that contract, Mr. Card? [225]  
A. November 3, 1947.

(Testimony of Eugene H. Card.)

Q. I mean the one between the Juneau Lumber Mills and the I.W.A.

A. No, I don't remember the date of that.

Q. That was several years old, wasn't it?

A. I think it was.

Q. So you copied that literally out of that former contract?

A. No, sir; I didn't copy it.

Q. What did you do? You adopted it?

A. The clause was in the contract which the I.W.A. presented to us, which in turn was presented to me for consideration, and I made several changes in the contract they had proposed, and it was under the revised contract that we started our negotiations about the 25th of October. I did not change the recognition clause, the wording of it as it had appeared in the contract presented by the I.W.A.

Q. But you say it was the understanding between the Corporation, the Spruce Corporation, and the I.W.A. people that the contract should cover everybody employed by the Juneau Spruce Corporation except those particularly excepted, the superintendent, foremen and office force.

A. All those at the Juneau plant; that is right.

Q. Why did you say this in this recognition clause—and it shall be “recognized as the sole and exclusive collective bargaining agent,” that is the Union shall be, “for all [226] the employees of the Employer,” and then you keep on. First of all you say, shall be “the exclusive collective bargaining agent for all the employees of the Employer”?



(Testimony of Eugene H. Card.)

A. That is right; all the employees.

Q. And then you go and say in which departments, namely, in the sawmill, in the manufacturing and in the retail departments. If it covered all of the employees, why say it is to cover those in these three departments, and no others?

A. Those were the general divisions of the operation down there, Mr. Roden, and, as the I.W.A. committee explained it to us, they wanted to be sure they got in all the general departments of the general outline of the divisions of the plant so there would be no misunderstanding.

Q. But it says "all employees." It meant all of them, didn't it?           A. Yes.

Q. It didn't need any further definition; is that right?

A. Well, that may have been. I don't know what their particular reason was for wanting those three words in there. It didn't make any difference. It didn't do any harm.

Q. Wasn't this the reason—because it was that way in the contract which they had with Rutherford?

A. They never said so. If that was the reason, I am sure I couldn't tell you. [227]

Q. At the time there was considerable talk about as to who should load the barges, isn't that right?

A. There was. I brought that up myself.

Q. As a matter of fact, that was about the last thing to be agreed upon before the contract was

(Testimony of Eugene H. Card.)

signed. You say it was mentioned and you understood that the barge loading was to be done by the sawmill workers; is that correct?

A. That is correct.

Q. Why wasn't that put in the contract if it was of such tremendous importance?

A. The contract, the recognition clause, already covered all work at the plant, Mr. Roden, and it was unnecessary and it is not the way these contracts are drawn up, to write in the one specific job classification and leave the others out. The wording of that recognition clause covered barge loading as well as other work at the plant, except odd-job classifications, which were excluded. It was unnecessary to write it in specifically. It included barge loading.

Q. That is your estimation of it, isn't it?

A. Yes, surely.

Q. But that wasn't the explanation the long-shoremen gave, was it?

A. They didn't have anything to say; they weren't involved.

Q. Which Peterson, the Secretary of the I.W.A., and Gustafson, another member of their committee, put on it when they talked to you later on, was it? Just say yes or no, that was not the interpretation which they put upon it?

A. Mr. Peterson and Mr. Gustafson were not present at the negotiation.

Q. When they talked to you, they were members of the I.W.A. when they talked to you in April?

(Testimony of Eugene H. Card.)

A. They didn't talk about that. I already testified to [228] what they said.

Q. What did they say?

A. They said they understood the longshoremen had a contract with the Juneau Spruce Corporation and they were willing to give up the work in view of that contract.

Q. Didn't they tell you when you had the hearing over here before the Mayor sometime in May, 1948, that the loading of all water-borne transportation was the longshoremen's work, according to the interpretation of their contract?

A. I wasn't present when Mr. Peterson and Mr. Gustafson testified before the Mayor's committee. If they testified, they didn't tell me.

Q. You weren't there?

A. I was only there at the time I testified myself.

Q. When the longshoremen's committee, together with the committee from the I.W.A., came to see you and Mr. Hawkins, they also told you, that is, the representatives of the I.W.A. told you, that in their opinion the loading of the barges belonged to the longshoremen. Isn't that true?

A. You are confused, sir. I never attended any joint meeting of the I.W.A. and the I.L.W.U.

Q. Isn't it a fact that the I.W.A. had at least two meetings, at both of which they passed a resolution saying that the loading of water-borne transportation here mentioned [229] was work of the longshoremen?

(Testimony of Eugene H. Card.)

A. I am not an I.W.A. member. I didn't attend their meetings.

Q. You never heard?

A. If you are asking for hearsay——

Q. Never mind. You were advised what went on prior to the picket lines being put up?

A. Not having been present——

Q. You had been told?

A. Not having been present, I can't say exactly.

Q. You want to tell the jury, and the Court, that you didn't keep yourself informed of the meetings of the I.W.A. with reference to the picket line? Is that what you want us to understand?

A. I don't know everything that took place.

Q. I didn't ask that. I am asking you if you want the Court and jury to understand now that you don't know what transpired at the meetings that the I.W.A. held a day or two before the picket line——

A. I would like the Court and jury both to understand that I don't know everything that took place.

Q. You are not answering.

A. I am trying to. If I understand or am wrong, and I am trying to understand, I wish to answer truthfully and honestly any questions. If you would like to repeat [230] your question, I will——

Q. Do you want us to understand, I will take that back. Do you know that there were meetings held here a day or two before the picket lines were established, don't you?

(Testimony of Eugene H. Card.)

A. I have been told there were.

Q. And you have been told what transpired at those meetings as far as the position the longshoremen took and the position the woodworkers took. Haven't you been informed of that?

A. I heard the testimony at the N.L.R.B. hearing last September; yes.

Mr. Roden: That is all.

### Cross-Examination

By Mr. Andersen:

Q. Mr. Card, you entered into a contract with the I.W.A. on what date?

A. The contract was signed November 3, 1947.

Q. And, as I understand it, you negotiated that contract between October 23 and November 3. Is that correct?

A. The final meetings were held at that time; yes, sir.

Q. The final meetings were held when?

A. Between October 23 and November 3.

Q. In other words, there were differences between all of you and no formal contract was entered into until the [231] differences were adjusted on November 3. Is that correct?

A. That is right, sir.

Q. When the longshoremen called on you on October 23, then there was no contract between you and the I.W.A., was there?

A. No signed agreement, that is right.



(Testimony of Eugene H. Card.)

Q. There was no contract between you on that date, was there? A. No signed contract; no.

Q. Will you answer that question. There was no contract between you on that date, was there?

The Court: As to whether it was signed or not?

Mr. Strayer: That calls for conclusions. I don't know if the witness can say if the parties were legally bound.

Mr. Andersen: I will withdraw that question.

Q. As you stated, November 3 was the final meeting. You straightened out the difficulties on October 23, the meeting of the 25th and 29th, and at the meeting of the 3rd the difficulties were adjusted and the contract signed? A. Yes.

Q. On October 23 you told the longshoremen that you had a contract with the I.W.A.?

A. I don't believe I testified I did. [232]

Q. Did you tell the I.W.A. representatives on October 23 that you wouldn't hire longshoremen because you had a contract with the I.W.A.?

A. I don't believe so.

Q. You made no such statement?

A. No, sir.

Q. You met with the committee of the I.L.W.U. on the 23rd? A. That is right.

Q. You told them you wouldn't enter into a contract, didn't you? A. That is right.

Q. Did you tell them the reason you wouldn't sign a contract with them on that date?

A. Yes.

(Testimony of Eugene H. Card.)

Q. What was the reason you gave?

A. That we recognized the I.W.A. as bargaining agent for the employees at the plant and the I.L.W.U. did not represent any employees and was not entitled to a contract.

Q. Is that the only reason you gave them?

A. That is all.

Q. That is all you said on that subject, is that right?

A. That was sufficient.

Q. I understand that was the meeting with Mr. Ford of the I.L.W.U., Mr. McCammon and Burgo?

A. Yes.

Q. You were present?

A. Yes.

Q. And Mr. Hawkins was present?

A. That is right.

Q. Subsequently did you have a conversation or conference with the I.L.W.U. representatives here in Juneau?

A. Not until sometime in the latter part of April, I think around the 20th or 25th of April of 1948.

Q. Did they ask you at that time to sign a contract with them?

A. Yes.

Q. At that time you said you wouldn't sign a contract with the I.L.W.U. because you had a contract with the I.W.A., is that correct?

A. I believe that is right.

Q. And as I understand it, your position with the company is to sort of look out for their labor relations?

A. That is right.

Q. Your job, as I assume, is to so shape the

(Testimony of Eugene H. Card.)

policy of the company that labor difficulties will be avoided if possible?      A. If possible; yes, sir.

Q. It is not the policy of your company to foment any labor disturbances, is it?

A. Definitely not. [234]

Q. I assume part of your job is to cut and fit—you testified that adjustments were made when possible—to the end that there will be no cessation of labor at your plant. Is that true?

A. Not entirely. It is not my job to do something wrong,

Q. That is inherent in what I said, sir, but I mean within the area of reasonable judgment and reasonable policies. It is then your job to cut and fit to the end that there will be no cessation of labor and your plant will operate. Is that true?

A. Well, it is never the desire of the company to have labor difficulties, naturally.

Q. Your job is to try to avoid them, is that right?

A. If possible.

Q. And go to all reasonable extents to prevent them?      A. Within the law.

Q. Within the law and within reason, is that correct?

A. No one ever gave me definitely those instructions. It might be.

Q. Don't I fairly state your office?

A. I expect that is the work of most any labor relations man.

Q. Between November 3 of 1947 and April 13 of 1948, were you here in Juneau?

(Testimony of Eugene H. Card.)

A. I left here, I think it was the 6th of November, 1947, [235] and didn't come back until April 13.

Q. You came back when there was this trouble at the mill, and you came back, I assume, for the purpose of trying to adjust any difficulties that were there?

A. I came back to see what the situation was to see what should be done about it.

Q. And if possible, so far as you were concerned, and consistent with your office of personnel management and labor relations advisor, to take such steps and advise the company in the operation of the mill?

A. That might be a little far-fetched to assume. I came back to see what could be done.

Q. Within reason, to get the mill operating again?

A. I always try to be reasonable. I don't know.

Q. Some people have more difficulty in being reasonable than others.

A. I found that out, sir.

Q. You came back as the reasonable person to see what to do about ironing out the trouble?

A. I came back at the request of Mr. Hawkins.

Q. To assist in trying to get things going again?

A. If possible.

Q. All right. When you came back you learned that the I.W.A. was ready to turn all this work over to the I.L.W.U., didn't you? [236]

A. Now you have got me on the spot. If I an-

(Testimony of Eugene H. Card.)

answer that question, you would say it is hearsay. I was told by Mr. Hawkins at that time that they were willing.

The Court: If he asks for hearsay you can give it to him.

A. Very well, sir.

Q. I think I know the rules of evidence and it is cross-examination. I can do it. You were told by the I.W.A. Union that the I.W.A. Union was perfectly willing to turn the work over to the I.L.W.U., isn't that true?

A. Yes, I think you could put it in those words, to that effect; yes.

Q. As I understand your testimony, you wouldn't turn the work over to the I.L.W.U. because you had a contract with the I.W.A. Is that correct?

A. It certainly is.

Q. And I assume you told the I.L.W.U. that, in substance, to wit, that you wouldn't sign a contract with the I.L.W.U. regarding this longshore work from the bull rail out, because you had a contract with the I.W.A. Is that substantially correct, sir?

A. You are referring to the meeting in April?

Q. Whenever it was—your conversation with the I.L.W.U.

A. The only one I had after I came back here was in the office of the Territorial Commissioner of Labor, and [237] Mr. Evans was representing the Commissioner of Labor, and he——

Q. Regardless of the time, sir, I am only con-



(Testimony of Eugene H. Card.)

cerned with this: did you tell the I.L.W.U. that you wouldn't turn the work over to them because you had a contract with the I.W.A.?

A. I did, sir.

Q. That was sometime in May or April, was it?

A. Yes; in April.

Q. Now, I assume you understood at this time—you stated you are familiar with the Wagner Act—that under that law you could hire anybody you wished, whether he belonged to the Union or not, you understood that?

A. I wouldn't put it that way, sir.

Q. You wouldn't put it that way? A. No.

Q. That isn't the way you interpret the Taft-Hartley Act? A. It is now; yes.

Q. Did you understand that under the Taft-Hartley Act that you could hire anybody you wanted, regardless of if he belong to a union or not?

A. It depends on what kind of a contract——

Q. Will you answer the question?

A. Will you repeat the question?

Q. Did you understand that under the Taft-Hartley Act that [238] you could hire men to work for you in that mill, whether or not they belonged to a union? A. Surely I do.

The Court: Your question was in the past tense and his answer was in the present. I don't know whether he had knowledge at that time or the present time.

Q. Let's say October 23, let's put it October 23,

(Testimony of Eugene H. Card.)

1947, ten days or so before the contract was signed, you knew at that time—did you know that you could hire men to work in that mill whether or not they belonged to a union, you knew that, didn't you?

A. I knew I could hire men to work in the mill regardless of union affiliation. Does that answer your question?

Q. Yes, that answers it very satisfactorily. Had you written any letters, for instance—strike that. Had you told Mr. Hawkins that, as the corporation's labor relations adviser, they could hire whomsoever they wished, irrespective of whether they belonged to a trade union? A. Surely I did.

Q. When did you so advise him?

A. Oh, that was——

Q. Before the sale was made from the Juneau Lumber to the Juneau Spruce?

A. No; it was along in July or August.

Q. Of 1947? [239]

A. Sometime when he was down to the States.

Q. In 1947? A. Yes, sir.

Q. You, of course, knew that he was Vice President of the Company and General Manager up here?

A. Yes, sir.

Q. All right. And when the longshoremen spoke to you they asked for the work that longshoremen traditionally do, didn't they?

A. I don't know why they asked for it. They simply asked us to sign a contract.

Q. Did they say they wanted to do that work,

(Testimony of Eugene H. Card.)

they wanted to do what is usually referred to as longshoremen's work?

A. I have repeated the conversation that took place just as nearly as I can. I can't recall it word for word a year and a half later. I am sure they didn't say anything about "traditionally longshore work." Mr. Ford merely said he wanted us to——

Q. To buy popcorn, or to do longshore work?

A. You will have to ask him.

Q. Didn't you ask them what they were there for, what work they wanted to do? A. No.

Q. In other words, these men came to talk to you, and you didn't know if it was a contract to sell popcorn or do [240] longshore work?

A. He said they wanted us to sign a contract with the Longshore Local. I asked if they represented any of the plant and he said "No," and I said we would not, could not sign a contract with his union.

Q. You knew at that time, didn't you, Mr. Card, that the men were hired by the Juneau Lumber as well as the Juneau Spruce when it was necessary to do longshore work, and they were not regularly on the pay roll; you knew that?

A. I didn't know the Juneau Lumber Mills ever hired men for longshore work such as you refer to.

Q. Did you make any inquiries as to the past practice? A. I did not.

Q. Did you ever read the contract that had been in effect between the Juneau Lumber and the Juneau longshoremen?

(Testimony of Eugene H. Card.)

A. I have never seen it, if one exists.

Q. Was it ever explained to you? A. No.

Q. As labor relations adviser for Juneau Spruce, do you know or were you consulted by them before they took over from the Juneau Lumber?

A. I was.

Q. Did you ask what contracts were in effect?

A. Yes.

Q. Labor relations contracts? [241]

A. I asked if there were any labor contracts.

Q. Of whom did you make that inquiry?

A. Mr. Dashney.

Q. Who is Mr. Dashney?

A. Auditor of the Coos Bay Lumber Company and the man who came up to make the purchase agreement.

Q. Did you ask if they had any longshoremen regularly in their employ? A. No.

Q. Weren't you concerned with it? A. No.

Q. As labor relations man advising a large corporation, weren't you interested in ascertaining their policy, whether or not longshoremen were hired?

A. I knew nothing of the so-called policy of hiring longshoremen.

Q. We will say "intermittently" to do longshore work there? A. No.

Q. You made no inquiry at all? Haven't you had any interest?

A. Surely, I had an interest in anything involv-

(Testimony of Eugene H. Card.)

ing labor relations. I asked Mr. Dashney when he asked me to advise him as to how this purchase should be handled from the labor end of it, I asked if there were any union agreements in effect to his knowledge.

Q. How many were you told there were, [242] if any?      A. One.

Q. By the way, how long have you been with the Coos Bay Lumber Company?

A. Since April 1, 1946.

Q. You have had a lot of experience around lumber mills, I assume?

A. Since September, 1921.

Q. You knew in this operation here that long-shoremen would be employed from time to time?

A. No, I didn't.

Q. You had no knowledge of that?      A. No.

Q. You made no inquiries at all as labor relations man?

Mr. Banfield: What date? At the time he arrived, or the Company took over, or what?

Mr. Andersen: I think the witness understands me.

Mr. Banfield: I don't understand you and should like to know.

Q. Do you understand me, sir?

A. Are you talking about——

Q. At the date of the change-over from the Juneau Lumber to the Juneau Spruce?

A. I asked if there were any labor contracts. I



(Testimony of Eugene H. Card.)

was told there was one. That was all the interest I had.

Q. That one was with whom? [243]

A. I.W.A. M-271.

Q. Weren't you told there was a contract between the Juneau Lumber and the Longshore Union here? A. I was not.

Q. Did you make any inquiry as to whether longshoremen were used in that operation? A. No.

Q. Did you make any inquiry as to what labor was employed from time to time?

A. I never talked to the employees of the Juneau Lumber Mills about anything.

Q. Getting down to the picketing there and so forth, as I understand it, when it came on, on the 13th, the mill was closed? A. Yes, it was.

Q. And you, of course, came up for that purpose; you didn't come up for the trip, did you?

A. I came up at the request of Mr. Hawkins.

Q. To try to iron this thing out if you could?

A. Yes.

Q. Did you, with respect to the amount of longshore work that was done here, did you make any inquiries as to what percentage of the longshore work was done in relation to the total labor or payroll of the company? Did you make any inquiry?

A. No.

Q. Didn't you try to determine whether the longshore operation was a major portion of the labor expense, or whether it was a minute portion of the

(Testimony of Eugene H. Card.)

labor expense of the Company? A. No.

Q. You weren't interested in that?

A. No, sir.

Q. Did you inquire into what would be the average monthly money expended by the Company for longshore work?

A. It would be pretty hard to say what was spent when they didn't spend any.

Q. I asked, did you inquire?

A. I didn't inquire.

Q. Did you ask anybody in the Company or the Longshore Local about how many men there were on the average for the Company, directly or indirectly, for other people, as has been testified, over, say a period of six months? A. No, sir.

Q. You weren't interested in those figures?

A. No.

Q. Whether they were great or large?

A. I was only interested in whether they had the right to try to force us to hire them.

Q. You weren't interested in whether the Company closed down, [245] you say?

A. I said——

Mr. Andersen: Somebody is mistaken. Will you read the witness's answer? A. It could be you.

Q. I said "somebody is mistaken." I have been mistaken many times.

Court Reporter: "I was only interested in whether they had the right to try to force us to hire them."

(Testimony of Eugene H. Card.)

Q. Is that your answer, sir?

A. If that is what I said.

Q. Then you weren't interested at all in whether the mill closed down?      A. Yes.

Q. I asked you about employing them and also if you were interested in whether or not the mill closed down?

A. I was interested in the fact that the mill closed down.

Q. And wanted to get it over?

A. If possible; yes, sir.

Q. Now on the technique of labor relations, tell me what facts are usually considered as most important.

A. Personally, I consider the first factor staying within the law, advising my Company properly within the law.

Q. What law do you refer to, if any?

A. Of course, that takes in all Federal laws.

Q. You don't advise people regarding the law?

A. No.

Q. You are not lawyer?

A. No; thank goodness.

Q. Do you advise regarding labor law?

A. Yes.

Q. What law do you have in mind?

A. The National Labor-Management Relations Act; the Fair Labor Standard Act, as it might apply. Those are the principal laws affecting labor relations.

(Testimony of Eugene H. Card.)

Q. The Fair Labor Standards Act is not involved here.           A. No.

Q. Do you concede any laws are involved in this dispute?

The Court: We are wandering far afield. We are not interested in the conception of this witness of the law.

Mr. Andersen: You might be right, your Honor.

Q. Tell me the proper technique of advising people in this sort of a situation.

A. I also try very hard to get along with people employed by the Company, in other words, I feel it is my job to sit down and talk things over and keep things straightened out.

Q. Amicably?           A. Yes.

Q. What else?

A. Principally, not to give away too much from the Company's [247] standpoint and not to be unfair to the people on the other side and at the same time try to balance the scales between the two. Primarily, I am employed by the Company.

Q. Does that complete it?

A. I think that will cover the main objectives; yes, sir.

Q. Do I understand it was you who advised the Company not to enter into contractual relations with the longshoremen?           A. Yes, that is right.

Q. When did you advise them that, sir?

A. Starting October 23, 1947.

Q. October 23 of 1947?           A. Yes, sir.

(Testimony of Eugene H. Card.)

Q. At that time and when you were in that meeting with Mr. Hawkins or any time after that, did you ever ask Mr. Hawkins how many longshoremen or how much money would be involved in so far as the Company was concerned, if they signed that contract with the longshoremen and if it didn't make any difference with the I.W.A.? Did you ask any question like that?

A. It was discussed to some extent; yes.

Q. Did he tell you how much the payroll would be, or how many longshoremen?

A. What longshore work are you talking about?

Q. Longshore work done at the expense of the Company, absorbed [248] by the Company, done by men employed by the Company, rebilled to commercial steamships—either, both, or separately, I don't care.

A. Of course. I am not trying to evade your questions. I will try to give this as clear as I can. The loading of commercial steamships—we have nothing to do with that.

Q. That is true.

A. There were some cannery tenders that were loaded by the longshoremen. These men were paid by the Company and charged on the invoice to the people who bought the boxes or the lumber. They probably amounted to several hundred dollars between the first of May and the 23rd of October of 1947, then, of course, that was all the longshore work that had been done.



(Testimony of Eugene H. Card.)

Q. You would say, in a year's period, if that is the criterion, perhaps there wouldn't be \$3,000 of longshore work by the Company and the cost assumed by them, is that correct?

A. Cost assumed by the Company?

Q. Yes.

A. It would be kind of hard to figure out. We didn't know how much——

Q. Do you think it would go as high as \$10,000?

A. I doubt it very much.

Q. You doubt it would be as much as \$10,000?

A. I doubt it.

Q. As a matter of fact, you don't believe it would be \$5,000?

A. Between \$5,000 and \$10,000, if you are talking about barge loading.

Q. We will take that figure. What is the total payroll? You have roughly 220 employees at Juneau, better than 50 in the sawmills someplace else and lumber yards in Ketchikan on the payrolls, the office force, President's salary; what is the total payroll?

A. You would have to ask somebody else.

Q. Don't you know the total? Aren't you the Personnel Director?

A. I am not the Personnel Director of the Juneau Spruce Corporation.

Q. Have you any idea of the total yearly payroll of the Company?

A. I understand that at the time they were in

(Testimony of Eugene H. Card.)

operation it was running somewhat better than \$100,000 a month.

Q. \$100,000 a month? A. Yes.

Q. And the total payroll of the longshoremen would be between \$5,000 and \$10,000 a year, is that correct? You have just testified, of course, that is only representative. A. Yes.

Q. With those facts in mind, on about the 13th, after you had [250] these facts and figures in mind, on April the 13th, you still advised the Company not to hire any longshoremen?

A. I advised the Company not to sign a contract with the local longshoremen, that is right.

Q. All right, sir.

Mr. Andersen: That is all.

#### Redirect Examination

By Mr. Banfield:

Q. Mr. Card, you examined over the objection of hearsay, as to what Mr. Peterson and Mr. Gustafson told you when you arrived back here in April, 1948. Just exactly what did they tell you?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial, may it please the Court.

The Court: However, it was gone into on cross-examination. It may be gone into on redirect examination. That is not merely for the purpose of repetition, but to bring out something that was not brought out.

Q. What was the attitude of Mr. Peterson and Mr. Gustafson?

(Testimony of Eugene H. Card.)

Mr. Andersen: I object to that as incompetent and immaterial. He asked what was said.

Q. What did they say?

A. They said jointly, between the two of them—I can't say exactly, but between the two of them, that they were given [251] to understand by the longshoremen who attended their meeting that there was a contract in effect between the Juneau Spruce Corporation and the Longshore Local and that that contract covered the work of loading the barges at the plant, and they felt that they would have to give up that work, which the I.W.A. had been doing, and turn it back to the longshoremen in view of that contract. I told them there was no such contract in effect. We had never signed a contract with the longshoremen and somebody had been kidding them along a little bit, in my opinion.

Q. Did you talk to any other officials of the I.W.A., committee members?

A. Not at that time.

Q. Did you before the mill re-opened July 19?

A. Yes.

Q. What did they say?

Mr. Andersen: To which I object as hearsay, may it please the Court.

The Court: Is this going into something other than——

Mr. Banfield: It is for the purpose, if the Court please, of determining the attitude of the I.W.A. Counsel started in here with testimony as to why

(Testimony of Eugene H. Card.)

the I.W.A. did this and why the I.W.A. did that and “didn’t you know what happened at their meetings?” [252]

The Court: I understand all that.

Mr. Banfield: I want to know what the attitude was of the whole Union.

The Court: Is this by a conversation brought out by counsel on cross-examination?

Mr. Banfield: No, he didn’t talk about a specific conversation at all. He just said “in conferences with the I.W.A. officials.” That is what the subject was.

Mr. Andersen: I don’t believe that is a correct statement of the record, may it please the Court.

The Court: All I am trying to do is conform with the rule, where one side brings out discussion or conversation the other may bring out the rest of it, if there is any. If the purpose is to merely bring out something not sufficiently brought out——

Mr. Banfield: If the Court please, I am now talking about also what Mr. Roden brought out, as well as what Mr. Andersen brought out, redirect examination on the whole cross-examination, including who told what in different meetings Mr. Roden pointed out that he was getting at what was the position of the I.W.A. “as told to you by various persons.” Now I am trying to find out exactly. I think there is more to be said.

The Court: The Court is not particularly interested in what you are trying to bring out so long as it is within [253] the rule.

(Testimony of Eugene H. Card.)

Mr. Banfield: I am well within the rule, your Honor.

The Court: You may proceed.

A. Where were we?

Q. We were discussing what the I.W.A. men told you at various meetings and what their attitudes were.

A. The first story I got was they had had a couple of meetings when longshoremen's representatives attended their meetings and they didn't know exactly what the score was and were afraid if they didn't give up this work the mill was going to be shut down.

Mr. Andersen: I move this be stricken as hearsay.

The Court: Objection overruled.

Mr. Andersen: I would like to interpose my other objection to this witness's testimony so far as the International is concerned.

The Court: It is admitted subject to the objection.

Q. Go ahead.

A. The plant was just getting ready to start the season's operation after being down a couple of months. They wanted work and were afraid they would lose the work. They knew they would lose work if the plant were shut down by the picket line and they thought the best thing, if there was going to be work, was to give the work up [254] of loading the barges and avoid any trouble.



(Testimony of Eugene H. Card.)

Q. Go ahead.

A. And they also said that they didn't know just what the situation was. During the winter shut-down the local I.W.A. officers they had prior to the time of the shut-down had left town or something, and they had got through the winter without officers and were just getting started again and didn't even have a President at the time this got started. The two they had, Mr. Peterson and Mr. Gustafson, were uncertain as to what to do so they thought the thing to do was give up the work, knowing there would be a picket line if they didn't and try to keep the mill in operation.

Q. Did they say anything about what effect there would be if they went through a picket line?

Mr. Andersen: I object to that as incompetent, irrelevant, immaterial and no foundation laid, may it please the Court.

The Court: Objection overruled.

A. No, I don't recall them saying anything to me about what might result to them if they went through a picket line.

Q. Was there anything said about their position under the Labor-Management Relations Act, I mean the Taft-Hartley law? Did they discuss that with you?

A. No, I don't recall that they ever did.

Mr. Banfield: If the Court please, there is one more subject entirely foreign to anything testified to today. I would like the privilege of recalling him.

The Court: You may.

Mr. Banfield: That is all. You may cross-examine.

Mr. Andersen: No further questions.

(Witness excused.)

The Court: Well, ladies and gentlemen of the jury, remember the admonition heretofore given you to refrain from discussing or talking about this case and from reading newspaper or other accounts of this or connected cases or matters. In other words, remaining aloof from anything that might influence you in this case.

Whereupon the Court adjourned until ten o'clock a.m. May 3, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:

### GLEN KIRKHAM

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Banfield:

Q. Will you state your name please?

A. Glen J. Kirkham.

Q. Mr. Kirkham, have you been in the employ of the Juneau [256] Spruce Corporation.

A. I have

Q. During what period of time?

A. For the last three years.

(Testimony of Glen Kirkham.)

Q. Have you ever belonged to any unions?

A. Yes; I belonged to the Millworkers' Union.

Q. What is the official name of the local union you belonged to?

A. I can't tell the right name, but I think 207 or something like that.

Q. Is that the International Woodworkers?

A. International Woodworkers.

Q. And is the number M-271?

A. M-271 I believe is the number.

Q. Have you ever been an officer of that Union?

A. I was President of that Union.

Q. During what period of time?

A. In about 1947.

Q. When did you cease to be President?

A. In the fall, I believe, of 1948.

Q. Were you the President of the Union on November 3, 1947?      A. Yes.

Q. And how long had you been President of the Union prior to that time?

A. I don't just remember, but it had been close to a year. [257]

Q. Mr. Kirkham, did you as President of the Union in the summer of 1947 have any occasion to meet with representatives of the International Longshoremen's and Warehousemen's Union, Local 16?

A. No, we had no occasions to meet with them. They met with us once but it was just a formal meeting.

Q. Did they request the meeting or did you?

(Testimony of Glen Kirkham.)

A. No; they requested it.

Q. Where was the meeting held?

A. It was held in the C.I.O. Hall.

Q. Do you remember about when that was?

A. Let's see, it was sometime in the fall of the year. I don't just remember just when.

Q. Was it before the contract of November 3, 1947, was signed?

A. Yes, it was before that.

Q. And who was present at that meeting?

A. You mean the officers?

Q. Name the persons that were present.

A. That would be pretty hard to do at that particular time. There were quite a few there that night I could name.

Q. Name the I.W.A. men that you can remember.

A. Nels Lee, Vice President; Tim O'Day was Secretary, and I can't think of the other fellow's name that worked on the log boom. He was Secretary-Treasurer. [258]

Q. Were there other members of the I.W.A., that is, general members?

A. Yes, a good many members.

Q. It was a meeting of the Union itself?

A. Yes.

Q. Who was there representing the longshoremen?

A. Mr. McCammon, Mr. Ford—they were the principal talkers. There were others who didn't talk.

(Testimony of Glen Kirkham.)

Q. What transpired at that meeting?

A. At that particular time they asked us to turn the loading of scows and barges over to them. In fact, as Mr. Ford or Mr. Cammon stated—I don't remember which it was—they wanted everything from the time the lumber was set down in the yard until well, from then on to the boats, to the scows.

Q. Did they want to do the work of bringing it up to the bull rail of the dock?

A. Well, he talked of wanting it turned over to them. He said they would do much more for us than what we were getting at the time, if we turned it over.

Q. What did he mean, "turn over"?

A. From where it was set down in our yard, let them handle it from there on to the boats.

Q. And did they want to stow it on the boats and barges too?      A. Yes. [259]

Q. What did they mean, "give you more than what you were getting"?

A. That wages would be boosted.

Q. Did they imply that would be under their jurisdiction and control?      A. I don't know.

Mr. Andersen: Just a minute. I object. It calls for conclusion.

Q. What was the understanding?

Mr. Andersen: I object on the ground that he should state what was said.

The Court: I think before he can say what the



(Testimony of Glen Kirkham.)

understanding was he would have to say what was said. An understanding differs radically from——

Q. What did they say?

A. The only thing he said that I can remember is that if we would turn it over to them that they would see that we would get a higher wage rate and then also it was stated their Union was strong and our Union was weak.

Q. And what was agreed by the I.W.A. Union?

A. Well, at our meeting——

Mr. Andersen: Same objection, may it please the Court. I will object on the ground that the witness should state what was said rather than what was agreed.

Mr. Banfield: If the Court please, a great many men [260] were there. Naturally he couldn't testify everything that was said at the meeting that night.

The Court: If he can state what resulted he can state what it was based on and he ought to state what it was based on. The understanding otherwise, or the statement of the understanding, is challenged as a conclusion.

Q. Mr. Kirkham, what was said with respect to the I.W.A. position in regard to this proposal?

A. You mean after they left?

Q. What was determined, in their presence or after?

A. There was no agreement in their presence. They asked for a vote. We didn't give a vote. We waited until after they left. The boys talked it over

(Testimony of Glen Kirkham.)

for a while and came to the conclusion they couldn't accept the longshoremen's proposition because it, well, it conflicted in our work down there considerably and it was understood that we wouldn't touch a thing that had ship's gear on it.

Q. You agreed that the I.W.A. would not do any work of handling when the tackle was attached to the ship's gear? A. That is right.

Q. If the loading was being done by a commercial steamer, what did you decide to do about it?

A. We decided not to touch commercial steamers.

Q. You mean after it was attached to ship's gear?

A. We would pull the stuff to the bullrail and from there on [261] the longshoremen would take over.

Q. What was the situation with regard to outsiders, as the cannery tenders that would come in for box shooks what was the understanding?

A. On that I don't think we had much understanding, as to box shooks and sometimes they loaded them, it depended—during that time labor was very scarce and there were several times Raatikinen from out here came in and sometimes they loaded and sometimes we loaded.

Q. Was any lumber loaded out on small boats and barges?

A. Company boats, and if someone came in and wanted a small stack of lumber we would. I wasn't President of the Union at that time. Mr. Turner was.

(Testimony of Glen Kirkham.)

Q. That had been the practice for sometime?

A. That had been the practice for some time when I went there.

Q. After this decision by the Union, was that decision conveyed to the longshoremen?

A. Yes; by letter.

Q. By letter?           A. By letter.

Q. What work were you willing to have the longshoremen do?

A. We was willing to have them load any ship that came in and that had its own gear on it. We would haul it to the bullrail and they would take over from there.

Q. Mr. Kirkham, were you President of the Union on October [262] 23, 1947?

A. Yes, I believe so.

Q. Did you meet Mr. Card about that time?

A. Yes, along in there sometime.

Q. Tell me when you first met with Mr. Card and where and who was present.

A. The first time I met Mr. Card was in the greenroom down there, and when he came in he just came in and introduced himself and told me who he was and asked for a meeting with our Committee over in the office and we met over there that evening. We were getting up a contract at this time. Our contract was practically all ready only we didn't understand how to write it up and we didn't know how to get it in there and we sent it to the International in Portland to work on. Finally they wrote us one and sent it back up to us.

(Testimony of Glen Kirkham.)

Q. Was the first written draft of the contract or the first written proposal typed out, prepared by you or your Union or Mr. Card or by whom?

A. By our Union, the first one.

Q. You say you had a meeting? A. Yes.

Q. Could that have been about October 25?

A. I can't remember the date; along there sometime.

Q. Did you discuss that contract at that meeting? [263] A. Oh, yes.

Q. What was discussed in particular with regard to the contract?

Mr. Andersen: I object to all this as hearsay.

A. I don't remember.

Q. What was said by Mr. Card and what was said by you?

Mr. Andersen: Same objection.

A. It is pretty hard to remember those things. I haven't seen the contract since, you know.

Q. I hand you here Plaintiff's Exhibit No. 2 which is in evidence as the agreement dated November 3, 1947, and ask you if you recognize that contract.

A. Yes; I remember this one. I remember it well.

Q. Now, Mr. Kirkham, I direct your attention to the Union recognition clause of the contract which is on the first page of the contract and ask you to read that paragraph for your own information.

(Testimony of Glen Kirkham.)

A. Yes; that is what we had put in it.

Q. Now, Mr. Kirkham, was anything said with relation to this paragraph at this meeting of October 25 regarding the work of loading barges?

Mr. Andersen: To which I will object as incompetent, irrelevant and immaterial and hearsay, may it please the Court.

The Court: Objection overruled.

Q. Go ahead and answer. [264]

A. Well, there were, but we couldn't give them any answer at that time because we never made a move without we went through the International down in Oregon, in Portland.

Q. What did they want that you had to refer to the International?

Mr. Andersen: I object as calling for a conclusion of the witness.

The Court: If he knows he may answer.

A. I didn't understand your question.

Q. What did the Company, the Juneau Spruce Corporation, ask for with regard to this paragraph?

A. They didn't ask us for anything on that particular paragraph.

Q. Did they ask you anything about barge loading?

A. Not at that time. This all came up later on. Mr. Card missed that in a way, too, about scows and barges. I told him I could not give any answer until I got word from headquarters below.

Q. What I wanted to know was what Mr. Card



(Testimony of Glen Kirkham.)

said or asked you about the barges and scows?

A. He just asked us if we would load them.

Q. Did you make any inquiry from the International?      A. Yes.

Q. What International was that?

A. International headquarters there in Portland. It is the head of [265] our Local here, the International Woodworkers of America.

Q. Did you get an answer back from that office?

A. We did. We wired and got an answer back.

Q. After you got an answer back, what did you inform them?

A. Our answer, we got back——

Mr. Andersen: May I interrupt and ask as to the date of this and for a proper foundation for it?

Q. All right. After you got an answer back, Mr. Kirkham, did you have another meeting with Mr. Card?      A. Yes.

Q. Was Mr. Hawkins present?      A. Yes.

Q. Was your Committee present?      A. Yes.

Q. And where was it?

A. Down in the mill office.

Q. And about how long was this after October 25?

A. I don't remember that. It seems like it was the last day Mr. Card was here.

Q. Was it before the contract was signed?

A. No, I think this came in after the contract was signed. I am not quite sure. It has been quite a long time ago.

(Testimony of Glen Kirkham.)

Q. Do you remember having two meetings with Mr. Card?      A. Yes.

Q. And do you remember that they were with your full Committee [266] and do you remember that Mr. Card finally had this agreement typed up for you after everything?      A. Yes.

Q. Was this before the typing of the contract or was it afterwards?

A. That was after the typing of the contract, I am quite sure.

Q. Was it after the contract was signed on November 3?      A. It seemed like it was after.

Q. How long was it before you got an answer from the International?

A. I believe the following day.

Q. You had the first meeting right after Mr. Card arrived, about October 25?      A. Yes.

Q. Did you send the wire right away?

A. No, a few days later.

Q. Then you got an answer back right away?

A. Yes. We had called several meetings at that time over the contract during the time we sent this wire, during the time we were holding these meetings.

Q. Mr. Kirkham, if I showed you copies of those wires, would you recognize them?

A. I presume I would.

Mr. Banfield: If the Court please, it will be just [267] a moment until I get the wires. If the Court please, the copies of the telegrams I have

(Testimony of Glen Kirkham.)

asked for will be produced by another witness I have called for ten-thirty, so I don't have them at this time.

Q. Mr. Kirkham, was it agreed, or tell me this, what did the I.W.A. promise the Company with regard to the loading of these barges?

A. We promised them that we would load them.

Q. Was the agreement made on that basis?

A. A verbal agreement was made on that basis at that time. I can't remember that it was a written agreement at that time, but it was verbal to go ahead and load them after the wire came from headquarters.

Q. Was there any discussion at that time what work——

Mr. Andersen: I move that be stricken. He seems to be trying the case of the Juneau Spruce Corporation vs. the I.W.A. and now counsel has introduced a contract Exhibit 2 and now he is attempting to vary the terms of the contract by parol evidence. I think it is improper and I don't believe he has the right to impeach his other witnesses or the document and I submit it is hearsay and calling for the conclusion and impression of the witness and——

Mr. Banfield: If the Court please, he is assuming something the witness is not going to testify at all. Our purpose in doing this is to show under what conditions and [268] circumstances the contract was made. This is not an adversary proceeding between

(Testimony of Glen Kirkham.)

the I.W.A. and plaintiff in this case. It is an agreement made between two parties and not parties to this suit, not identical parties to this suit. I have the right to show what the contract is and how it operated afterwards.

The Court: Would it show any more if his testimony goes in, anything more than what is already embodied in the contract?

Mr. Banfield: We don't think it would, other than explaining the terms, what is meant in the industry, the phraseology.

Mr. Andersen: The contract speaks for itself, unless there are technical words that require explanation or latent ambiguities, there is no room for explanation or need therefor.

The Court: That is the way it strikes me. Unless you can point to something specific in the contract which you wish to explain or illustrate—

Mr. Strayer: May I say one thing? We think the contract covers work that was talked about, but the defendants claim it did not or it was not intended to cover barge loading. It becomes important to show that both parties intended and interpreted it as barge loading.

The Court: To show how the parties interpreted it? [269]

Mr. Strayer: Yes.

The Court: You may proceed.

Mr. Roden: That can only be shown by actions on the part of the different parties, how they in-

(Testimony of Glen Kirkham.)

terpreted the contract. The interpretation of the contract was completed when it was signed. All negotiations, understanding, talks about it became merged in the contract and there is no reason now why the terms of the contract should be changed. It is not ambiguous. It is fully understood. It is in plain English language. One Union understands as well as the other. The very most that can be claimed now is what they have done under it, but they want to tell you what the contract means.

Mr. Strayer: No distinction can be shown between acts and conversations of the parties. What they said was a verbal act showing the interpretation of the contract.

The Court: I was going to add that since the parties' acts showing their understanding or interpretation of the contract would be competent, then likewise the antecedent interpretations placed on it not by acts but what they said would likewise be competent, I should think. You may proceed.

Q. Mr. Kirkham, do you remember any conversation at the meetings between the I.W.A. and the Juneau Spruce Corporation representatives in October of 1947 as to how this paragraph should be worded and as to what it should include?

Mr. Andersen: May I have a better foundation as to [270] place and persons present, your Honor?

The Court: Yes, I think it should specify those circumstances.

Mr. Banfield: If the Court please, I believe that



(Testimony of Glen Kirkham.)

the witness already testified that the meetings were in the office of the Company and both meetings had the same persons present. I will be glad to go over it again.

Q. Mr. Kirkham, tell us where the first meeting was with the Company?

A. Down in the Company office.

Q. Was there a subsequent meeting?

A. There were.

Q. And where was it?

A. In the office down below, or at the Juneau Spruce.

Q. Who was present at the first meeting representing the Company?

A. Mr. Hawkins, Mr. Card, and it seemed to me like Stan Johnson was there. I am not too sure about that, but it seemed like he were.

Q. Who was present for the Company at the second meeting?      A. The same ones.

Q. Who was present for the I.W.A. at the first meeting?

A. There was Nels Lee, Tim O'Day——

The Court: I think all that has been gone into. Counsel's objection was that you didn't fix the time and [271] place of this particular interpretation that you are seeking to bring out that was placed on the contract.

Mr. Andersen: Correct, your Honor. I thought he said it was October 29 he had this discussion. I want to make certain and to learn who was present there.

(Testimony of Glen Kirkham.)

Q. Go ahead and tell who was present at the second meeting.

Mr. Andersen: Is that the meeting of October 29?

Mr. Banfield: The witness said he was not certain of the dates of the meetings, but there were two between October 23 and the date it was signed.

Mr. Andersen: I would like to know if it was at the second meeting.

Mr. Banfield: Yes, that is right.

Q. Did you discuss the paragraph at the first or second meeting or both of them?

A. Both of them.

Q. At the second meeting, what was said regarding the Union recognition clause which in this contract states——

Mr. Andersen: I object. I assume——

Q. "The Union is hereby recognized as the sole and exclusive bargaining agent for all the employees of the Employer in its sawmill, manufacturing and retail departments at Juneau, Alaska."

A. Yes.

Q. What was said at the first meeting and by whom, regarding [272] that provision?

A. On that particular clause, I don't know that there was any particular discussion on it. We was all satisfied with it.

Q. Was there any discussion regarding it at the second meeting?

A. You mean the sole bargaining agent of our Union?

(Testimony of Glen Kirkham.)

Q. Yes. A. No, we were both satisfied.

Q. Was there any discussion at any meeting?

A. At our main meeting up in the Hall.

Mr. Andersen: Just a minute. That is not responsive.

Mr. Banfield: The answer may be stricken.

Q. Mr. Kirkham, with respect to these two meetings, was there anything said as to what specific jobs should be covered by this phase "all employees of the Employer at Juneau, Alaska"?

Mr. Andersen: I think I will object. The witness said nothing was said about it at all.

Mr. Banfield: He said nothing was said about the exclusive bargaining agent. It was agreed to. I am asking if anything was said with relation to this phrase as to what work it would cover.

The Court: Objection overruled.

Q. You may answer that.

A. Our agreement, our talk we had up there, we said that we [273] would load the scows and barges, that everything where we used our own equipment, that we would load, if I understand your question right. That is what came in there. We also stated at that time, which I don't believe was in any contract, that we wouldn't touch anything that came in there which had ship's gear on.

Q. That part "ship's gear on," that was not mentioned?

A. That is right. We wanted to be the sole bargaining agent for that Company. That was one of the main reasons in there.

(Testimony of Glen Kirkham.)

Q. Did the I.W.A. insist on that provision?

A. We did, up here in the meeting.

Q. Was that fact known by the Company?

A. I don't know. I couldn't tell you whether it was or not, but anyway that is what we wanted.

Mr. Banfield: If the Court please, we will produce a witness here to show that he is unable to find these wires in the file of the I.W.A. by the man who has charge of them. We have a right to show what was in this wire that was returned from the International by this witness. If the Court please, the copy of that wire or, no, I think it was a letter—Mr. Strayer says he is quite sure a copy of that wire was furnished to Local 16. They may have it.

The Court: Hasn't he already testified to the contents of that wire? [274]

Mr. Banfield: No; I didn't put that in.

Mr. Andersen: That is true, your Honor.

Q. Mr. Kirkham, do you have any copies of these wires? A. No, I haven't.

Q. Do you know where they would be?

A. They are supposed to be in the records of the Union at the Hall. Shortly after that wire came I was put on a different job here. I couldn't belong to the Union any more. I read the wire and I believe it was put in the—I believe the Secretary had it in his book up there.

Q. Was that wire used at any other time here in Juneau, do you know?

(Testimony of Glen Kirkham.)

A. I am not sure, but it seems to me like it were.

Mr. Andersen: I move that be stricken as a conclusion of the witness.

The Court: Motion denied.

Q. Mr. Kirkham, do you know the contents of the wire returned from the international?

A. I couldn't quote it, but the wire stated for us to go ahead as we had been doing before and also said that if any trouble started that they would be up immediately.

Mr. Andersen: Same objection, I assume, as to all this line of questioning?

The Court: What objection is that?

Mr. Andersen: Incompetent, irrelevant and immaterial. [275]

The Court: It seems to me that before the witness is questioned as to the contents of the reply or answer that perhaps the telegram that elicited or asked for this advice should be put in.

Mr. Banfield: That is another thing that we can't find at this time.

The Court: Then his testimony first should be why that was sent to headquarters.

Q. Did you send a wire to headquarters yourself?  
A. No, the Secretary.

Q. Did you see it? A. I saw a copy of it.

Q. What was in that?

A. Asking for a decision of this loading of scows and barges and explained to them just what our stand was up here and we got the answer back immediately and they told us which way to go.



(Testimony of Glen Kirkham.)

The Court: Was anything said in that telegram as to the claims of Local 16?

A. No.

Mr. Andersen: I beg your pardon. I didn't hear the last answer.

The Court: No.

Q. Mr. Kirkham, you mentioned here what was voted on by the Union prior to this agreement. You stated the Union voted [276] not to handle anything while it was attached to the gear of a ship. Whose ships would that be?

A. That would mean commercial ships.

Q. And what if you were using Company gear?

A. I don't think we discussed that.

Q. Did the Union decide on what work it would do and what work it would not do?

A. We decided to load scows and barges but anything that came in here with ship's gear on it, that is also Government ships, we wouldn't touch it, just take the stuff to the bullrail. That is the agreement we made.

Q. How about Company-owned vessels?

A. We loaded them right along. Nothing was said about that.

Q. Had it been your practice? A. Yes.

Mr. Banfield: You may cross-examine.

#### Cross-Examination

By Mr. Andersen:

Q. During this period of time there were quite

(Testimony of Glen Kirkham.)

a few meetings between the Union and the Company?

A. Only two or three meetings, only to straighten out our contract, that is all they were for.

Q. In other words, you were trying to negotiate a contract with them? [277] A. Yes.

Q. Finally on November 3 you entered into an agreement with them? A. Yes.

Q. And this is it, this contract dated November 3? A. That is the contract we agreed on.

Q. On November 3? A. Yes.

Q. This was your first contract with the Company, wasn't it? A. I beg your pardon?

Q. Was this your first contract with the Company?

A. No, we had contracts before that. That is the first one I had anything to do with.

Q. Do you know if the I.W.A. had any other contracts with the Spruce Corporation?

A. Sure they had. I don't know whether they were with the Spruce or not.

Q. You mean with the Juneau Lumber Company?

A. Yes, and I think we were running on that until this was written up.

Q. In other words, the Juneau Lumber Company had a contract with the I.W.A. and from the time the Juneau Spruce took over from the Juneau Lumber you kept on under the same contract?

A. Under the same contract. [278]

(Testimony of Glen Kirkham.)

Q. And were paid the same wages?

A. Yes.

Q. And had the same working conditions?

A. Yes.

Q. And the same seniority? A. Yes.

Q. And they recognized the I.W.A. as bargaining agent, just as it was with the Juneau Lumber Company; is that correct?

A. Well, I don't know. I didn't have any dealings with them at all until this contract was written up.

Q. And signed? A. Yes.

Q. But during the intervening period from the time the Juneau Spruce took over from the time the Juneau Lumber sold—strike that. From the time the Juneau Lumber sold to the Juneau Spruce Company, and until this contract, Plaintiff's Exhibit No. 2, was written up, your wages were the same as they had always been?

A. No; I got a raise.

Q. You got a raise. Were your working conditions the same? A. The same.

Q. And you settled grievances the same as always?

A. If there was any grievance; I don't remember any.

Q. And operations were the same as for Juneau Lumber; isn't that true? [279]

A. I guess it is.

Q. All you fellows felt, and the Union felt, that

(Testimony of Glen Kirkham.)

the contract of the Juneau Lumber had carried on?

Mr. Strayer: I object to that.

Mr. Andersen: This is cross-examination.

The Court: What is the question?

Court Reporter: "All you fellows felt, and the Union felt, that the contract of the Juneau Lumber had carried on?"

Q. Right over to Juneau Spruce, and you worked under the same conditions; isn't that true?

A. Hardly true.

Mr. Strayer: I object to the questioning along this line, your Honor. It isn't material what this witness or others may have felt. It is a legal situation of carrying over these other contracts.

The Court: It is true he is being asked here to state what he believed was the agreement.

Mr. Andersen: Supposing I withdraw the question, your Honor.

The Court: And what or how the rest of the members felt about it, for whom I imagine he could not speak.

Mr. Andersen: I will withdraw the question.

A. I could answer.

Q. Suppose you answer my questions. We will get along a lot better if you just answer my questions, as I said. [280] You were the President of the I.W.A. Local here in 1947, correct?

A. Corect.

Q. Did you occupy that position in the Local in 1946? A. No, I was just a member.

(Testimony of Glen Kirkham.)

Q. You only occupied that position one year, in 1947?      A. I don't remember the dates.

Q. Do you remember the year you were President?      A. 1947.

Q. Is that the only year you occupied that position in the Local?      A. I think that is all.

Q. During 1947, say the first part of 1947, did you have any meetings with the Company at all?

A. In the first part of 1947?

Q. Did you have any labor meetings about anything?      A. No.

Q. There were no grievances with the Spruce Company at all?      A. No, not at that time.

Q. Did you discuss any wage raises with the Company during the first part of 1947?

A. I don't just remember when the wage raise came in, but when they raised the wages down below we got ten cents an hour up here. The Company gave us that without going to them at all. [281]

Q. As I understand, the old contract with Juneau Lumber Company had such provision in it, that if there was a wage increase given down below it would be automatically given under the old contract.

A. I believe it were, but the old contract was five years old.

Q. It ran from year to year?

A. No, it played out somewhere along the line?

Q. The contract was executed in 1942?

A. Somewhere along there.

Q. Wasn't there a clause that it carried from



(Testimony of Glen Kirkham.)

year to year unless one side gave the other notification of modification or something like that?

A. Something like that.

Q. So the first part of 1947—strike that. Do you recall whether you got your raise before or after May 1 of 1947?

A. No, I don't recall.

Q. Didn't you get it after the first; isn't that correct?

A. I don't remember the dates.

Q. You got it from this new Company, the Spruce Company?

A. Yes, and before that from Rutherford.

Q. You got your raise from the Spruce Company, the ten cent raise you mentioned?

A. I don't remember if it was from the Spruce or Rutherford. I got a raise and a check after Rutherford left. He sent back pay. [282]

Q. After Rutherford sent back pay and after Rutherford left you also got a ten cent raise, does that refresh your memory? After Rutherford left you got back pay?

A. Just as he was leaving here he wrote us out checks for back pay.

Q. When did he leave here?

A. I don't know that either.

Q. Well, it was sometime after he sold to the Spruce Company, didn't he?

A. 1947.

Q. Sometime after June?

A. Chances are it would be.

Q. The same time you got the back pay checks is the same time you got your ten cent raise; isn't that true?

(Testimony of Glen Kirkham.)

A. I don't know whether it is or not. We got wage raises along the line.

Q. When did you get the first one?

A. I can't tell the dates.

Q. How many do you say are "several"—three?

A. There must have been three, two or three.

Q. All in 1947?

A. A five cent raise and a seven and a half cent raise and it seemed like ten cents.

Q. The first raise was in the first part of 1947?

A. Yes; I got all the raises that was coming in 1947. [283]

Q. Did you get a raise around the middle of 1947? A. I don't remember.

Q. And you got your last raise, say, after July of 1947?

A. I don't remember when those raises came.

Q. But after Rutherford left, is that true?

A. I wouldn't say it is.

Q. A few moments ago you said that after Rutherford left you got checks for back pay?

A. What Rutherford gave us—I don't know whether Roy left town but I got a back pay check.

Q. You testified after Roy Rutherford left you got a check for back pay and you also got a raise in wages. Is that true, sir?

A. If I knew the dates I would tell you whether it is true or false.

Q. It was you who said it was after Rutherford left; is that true? A. It might be.

(Testimony of Glen Kirkham.)

Q. Was it after he left that you got a raise in wages also?

A. You ought to have that written down and read it off; maybe. I can't remember the dates.

Q. You were called by Mr. Banfield.

Mr. Strayer: Your Honor, if Mr. Andersen wouldn't confuse the witness by when Mr. Rutherford left, if he would say "after the Juneau Spruce Corporation"— [284]

Mr. Andersen: Suppose I ask my questions in my own way, may it please the Court.

The Court: The witness probably should be told if you don't remember—you are not obliged to know anything you might be asked—if you don't know or don't remember you can say so.

Q. The contract you had with the Juneau Lumber had a clause to the general effect that if there was a raise down below, that is, in other lumber industry in which the I.W.A. was interested, you would get a certain increase over that. Isn't that true? A. I believe it is.

Q. And when that raise was placed below you automatically got your ten cent raise up here; is that true? A. Yes.

Q. And is that after Rutherford left?

A. The ten cent raise?

Q. Yes. A. I don't know.

Q. You had a contract; you got a raise under the contract; isn't that true? A. Yes.

Q. How many meetings did you have with Mr.

(Testimony of Glen Kirkham.)

Card or Mr. Hawkins before the contract was signed? Did I understand you to say two or three meetings? [285]

A. Two, I believe. I think three meetings altogether. I can't remember all those things.

Q. And as I recall, somewhere around the 29th of October your Local had a meeting and you went over the proposed contract and about the 29th of October, and at that time everything was gone over and the Local decided to sign the contract and November 3 you finally agreed to enter into this agreement with the Company?

A. Yes, with the Company.

Q. Did you usually attend all meetings of the Local?

A. I wasn't to all of them; no. I was to most of them.

Q. You know that the question of who should do the longshore work was discussed in your Local?

A. In our Local?

Q. Yes.

A. Yes, it was discussed several times.

Q. And you also discussed the Constitution of the I.W.A., didn't you, that the jurisdiction of lumber workers extends from the stump until it is manufactured into the finished products in the mill?

Mr. Banfield: I object. That was not asked on direct. Mr. Kirkham testified there were two or three meetings with Mr. Card, that is all. If he is going to use him as a direct witness let him call

(Testimony of Glen Kirkham.)

him as his own witness when the time comes. [286]

The Court: But the witness was asked as to the scope of the work done by them and this examination falls within the scope of direct examination. Objection is overruled.

Q. In these meetings you held in your Union, such as on October 29 or any of these meetings when you discussed the question of barges, it was brought out in these meetings under your own Constitution, that is the I.W.A. Constitution, the labor claims or labor jurisdiction of the I.W.A. is from the stump until it is through the mill, that is true, isn't it?

A. Well, I don't know whether it is or not. You take lumber from finished products, you can take it from here down below and re-work it.

Mr. Andersen: I move that be stricken as not responsive.

Q. I asked you if you discussed that in your Union. A. Not to my knowledge.

Q. Don't you recall having any discussion at all?

Mr. Andersen: You have Section 3, I assume? (Addressing counsel for plaintiff.)

Q. Will you read Section 3 there, right opposite my thumbnail?

Mr. Strayer: Will you let me look at it, Mr. Andersen. I haven't seen it. [287]

(Document was shown to counsel for plaintiff.)

Q. I directed your attention to Section 3 of



(Testimony of Glen Kirkham.)

your International Constitution which I will read to you. "This Union shall be International in scope and shall unite into membership all working men and working women who are employed in or around any operation or employment having to do with the processing and handling of wood products at all stages from the stump to the finished product." Now, in your meetings, didn't you discuss that clause at all?

A. We did a few times. I remember it was mentioned a few times.

Q. It was in relation to a discussion around your own Constitution your Union finally passed a motion, wasn't it, that the loading of barges didn't belong to you, that it belonged to the longshoremen?

A. I don't remember anything like that.

Q. Do you know if you were present at a meeting of your Union April 1, 1948, shortly before the strike?

A. Not in 1948, I couldn't have been there because I was out of the Union in 1947.

Q. When did you leave the Union?

A. November, I think.

Q. By the way, what sort of work do you do now?

A. Bull gang foreman.

Q. For whom? [288]

A. For the Juneau Spruce Corporation.

Q. You are one of the bosses down at the Company now, so to speak?

A. Yes.

(Testimony of Glen Kirkham.)

Q. Just what is your position there?

A. Well, it is fixing docks and building barges and piling up lumber somebody knocks over and anything I am supposed to do in that line of work.

Q. Are you paid a monthly salary by the Company?

A. No, I am paid by the day.

Q. Do you have men working under you?

A. Yes.

Q. How many?

A. That depends. Sometimes a couple, sometimes eight or ten.

Q. When were you employed on that basis?

A. This particular one?

Q. Yes.

A. I was yard foreman. I don't remember when I was taken off, but when Mr. Shultz came he changed it to bull gang foreman.

Q. And you left the Union?

A. It was right after that was signed, that contract.

Q. When did you get this foreman's job you now have?

A. In November.

Q. And then you left the Union, is that true?

A. Yes.

Q. Aren't you still friendly with the Union?

A. Why, sure.

Q. Did you discuss this problem with the Union people, I.W.A.?

A. Since I got out of the Union? Nobody discussed these things with me since then. Once in

(Testimony of Glen Kirkham.)

a while it was mentioned, a few things, but not general discussion or anything of that kind.

Q. You learned that Local 271 voted to turn the work over to the longshoremen?

A. No, I don't know anything about it.

Mr. Strayer: The witness testified he is no longer a member and he is not competent to testify to the views of Local 271.

The Court: Not unless he was at the meeting.

Mr. Anderson: That wasn't my question, may it please the Court.

Mr. Banfield: He asked "didn't you know that the I.W.A. voted to turn this work over to the International Longshoremen's Union" and the witness testified that he was not at the meeting of April 1 when that was done or the meeting of April 9.

The Court: It would call for hearsay, but if he wants hearsay he can ask for it on cross-examination. Objection overruled. [290]

Q. Did you learn that information, sir?

A. No, I never heard any one discussing that.

Q. Nobody in the plant or no friends of yours in the Union?

A. I have plenty of friends on both sides but we aren't down there talking this Union stuff down on the job.

Q. The strike, or rather the lockout, was on April 10, 1948?

A. I don't remember if it was April the tenth.

(Testimony of Glen Kirkham.)

Q. April 10, wasn't it?

A. Something like that.

Q. Between April 1, about March 15 until the time of the lockout, a great part of the discussion was about trying to avert this difficulty, wasn't it?

Mr. Strayer: I want to object to counsel's term "lockout." That is in great controversy here, whether there was a lockout or not. He can ask questions without using terms of that character.

Mr. Andersen: I simply based it on Mr. Hawkins' testimony that there was a lockout by the Juneau Spruce.

Mr. Strayer: That doesn't mean there was a lockout.

Mr. Andersen: I have a right to use his terms.

The Court: Mr. Hawkins testified your plans characterized the difficulty. You can't take advantage of that.

Mr. Andersen: Your Honor is probably right.

Q. In other words, we will put it this way. There were two pickets or four, on the tenth, weren't there, of April? [291]

A. There were two there on the tenth, if I remember right.

Q. So between April 10th and March 15th there was quite a bit of talk there at the mill, isn't that true?

A. I was switched to night foreman in the yard and the night shift didn't seem to know anything about this until the night of the strike, so I heard very little of that.

(Testimony of Glen Kirkham.)

Q. You didn't interest yourself in this problem?

A. They didn't present it to me.

Q. And you didn't interest yourself in it, isn't that true?

A. That is right. If I didn't know about it, how could I?

Q. Now you say you had a first meeting with a committee of the longshoremen where you discussed with the Union the work claims of the respective organizations; that is true, isn't it?

A. You mean when I was President?

Q. Yes.

A. I don't hardly get your question.

Q. Do I speak loud enough for you?

A. No, not quite.

Q. Tell me if I don't. How many meetings did you attend while you were President of the Local to discuss the question of work claims with representatives of Local 16 here?      A. One.

Q. And when was that? [292]

A. I don't remember the date.

Q. It was in 1947?      A. 1947 sometime.

Q. The fore or later part?

A. The fore part.

Q. The fore part?

A. It was before June, if my memory hasn't failed me too much.

Q. That is of 1947?      A. 1947.

Q. And the longshoremen, as I understand your previous testimony, said that they always considered



(Testimony of Glen Kirkham.)

the handling of cargo in and around docks as their work, is that correct?

A. I don't know whether that was brought up at that particular time or not. We came together as to the loading of scows and barges.

Q. How long did the meeting last?

A. For half an hour.

Q. Nothing came of that, is that true?

A. Nothing so far as I know.

Q. It was just a general discussion where they talked with you?

A. We gave them the floor; let them explain what they wanted. Mr. McCammon and Mr. Ford done most of the talking. [293]

Q. Shortly after that was there another meeting with the I.L.W.U., that is, Local 16?

A. Not while I was there.

Q. While you were in office and with Local 16, nothing more was said about it, the matter simply dropped?

A. There was nothing while I was at the meetings.

Q. After that meeting you wrote a letter to Local 16?

A. Our Secretary wrote one.

Q. Did you look for a copy to see if you had one?

A. I have been out of the Union so long it wouldn't do me any good.

Q. Did you go up and inquire?

(Testimony of Glen Kirkham.)

A. I think it is up to the President of the Union to find that. I think he has it.

Q. At the Juneau Spruce Corporation and the Juneau Lumber Company, longshoremen had always done a certain amount of longshore work there, hadn't they? A. Done some; yes.

Q. After the Juneau Lumber sold to the Juneau Spruce, they had the same work?

A. They came down a few times when there were box shooks.

Q. There was no difference if it was the Juneau Lumber or the Juneau Spruce—they did the same work? A. I don't think you understand.

Q. Just answer the question. [294]

A. You don't understand.

Q. What I am asking is this: After the Juneau Lumber sold to the Juneau Spruce longshoremen still worked down there, substantially the same as when the Juneau Lumber had it, isn't that true?

A. I guess so.

Mr. Andersen: That is all.

#### Redirect Examination

By Mr. Banfield:

Q. Mr. Kirkham, did you ever make any investigation to determine whether I.W.A. men loaded barges under this Constitution?

A. Yes, I did.

Q. Where?

A. Down in the States, in different mills down below.

(Testimony of Glen Kirkham.)

Q. Do I.W.A. men load barges down there?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial, may it please the Court.

Mr. Banfield: May it please the Court, he is bringing in the Constitution. He used the phrase "from the stump to the finished product." We want to show just what the I.W.A. Union does under the Constitution with respect to loading barges under this Constitution.

The Court: You want to prove a custom? [295]

Mr. Banfield: I want to prove a practice: in other words, how they operate under the Constitution and By-Laws and what is meant by "finished products" in the Union By-Laws.

Mr. Andersen: May it please the Court, I think custom and practice have to be limited to this port. If we are going beyond this port, if we go one port beyond, then both sides can go to every port in the United States where I.W.A. would have a contract, and we would be here interminably. It is not a question of other ports, but here.

The Court: Custom can be general throughout the industry and is not limited to one port. If it is the purpose to prove custom here, the question may be asked.

Mr. Andersen: The same objection, may it please the Court.

Q. I withdraw that question and ask this question: Have you made any investigation to determine how this provision is interpreted by the I.W.A.

(Testimony of Glen Kirkham.)

on the West Coast?           A. The West Coast?

Mr. Andersen: Just a minute. That question calls for "yes" or "no" answer.

Mr. Banfield: I asked if he made an investigation.

Mr. Andersen: The answer is "yes" or "no."

Q. You can answer. Did you?           A. Yes.

Q. Where did you make the investigation? [296]

A. I made it down in Oregon.

Q. What did you find?           A. I found——

Mr. Andersen: The same objection, as it is incompetent, irrelevant and immaterial.

The Court: I am wondering how it could be competent to show how this particular provision is construed elsewhere. I can't see how it is competent to show the construction placed on this provision by some other branches of this Union.

Mr. Banfield: If the Court please, the purpose is to show that from the stump to the finished product means from the time the timber is felled in the woods until the manufacturing is completed and it includes the transportation of it, at least certain phases of it. All the handling—I want to show it includes the handling of lumber.

The Court: In other words, what you want to show now is how this particular provision is interpreted by the Union generally?

Mr. Banfield: Yes, under their International Constitution, what is it that governs these people in their actions.

(Testimony of Glen Kirkham.)

The Court: Evidence is already in as to the interpretation by headquarters. Objection overruled. You may answer.

Q. You may answer that, Mr. Kirkham. [297]

A. You mean about the loading?

Q. Yes.

A. Around Waldport, Oregon, I inquired——

Q. I just asked what the interpretation was, not exactly what town, but——

Mr. Andersen: I object to that as calling for a conclusion of the witness.

The Court: I don't think at the present time he can state that, unless you examine him as to what interpretation is placed by the Union. One inquiry at a certain place is not a sufficient basis.

Q. I want to show what interpretation is placed upon it by various local Unions; what is the practice?

A. Down there they have regular loaders on those rivers. It is all scows there. They lift it to the dock, and after they lift it to the dock it is loaded and taken down the river and turned over to the longshoremen. I think they call them stevedores that load those boats, nothing but those scows.

Q. Are they I.W.A. men?

A. I don't know. They may be.

Mr. Andersen: I move that be stricken as speculative.

A. That is the way they load them.



(Testimony of Glen Kirkham.)

The Court: It doesn't appear that this information he has is sufficiently precise. [298]

Mr. Andersen: I move the answer be stricken, all of it.

The Court: The answer will be stricken.

Q. Now, Mr. Kirkham, how does your Union interpret this provision of the Constitution here? I want to know how it interprets it with respect to the loading of barges with lumber?

Mr. Andersen: He just testified he is not a member of the Union and didn't know much about it.

Q. How was it interpreted up to the time you left the Union and when you were President?

Mr. Andersen: May it please the Court, he left the Union in 1946, and in relation——

Mr. Banfield: I am sorry, it was in 1947. I would like to have the recital correct.

Mr. Andersen: He left the Union in 1947. It is too short a time.

The Court: Merely because he left the Union shortly after the execution of this contract would not preclude him from testifying if he was in the position he has been in since, in which he would be certainly likely to know how it was interpreted.

Mr. Andersen: Certainly not as a Union member, as I understand the question now, as foreman of the Company, rather than as a former member.

Mr. Banfield: I will withdraw the question.

Q. I will ask you, during the time you were President of Local M-271, I.W.A., how was the

(Testimony of Glen Kirkham.)

jurisdiction of the Local interpreted by the Local Union with respect to barge loading?

Mr. Andersen: That assumes something not in evidence; first, that there was such an interpretation, and secondly, it calls for a conclusion and opinion of the witness.

The Court: If there wasn't any such interpretation of course he may answer accordingly.

Q. Answer the question.

A. We said we would load the scows and barges. That is what the Local voted, and nearly one hundred per cent, too.

Mr. Banfield: That is all.

Mr. Andersen: No further questions.

(Witness excused.)

## JOSEPH WILLIAM FRANCIS

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

### Direct Examination

By Mr. Banfield:

Q. Mr. Francis, will you state your full name.

A. Joseph William Francis.

Q. Where are you employed?

A. At the Juneau Spruce. [300]

Q. How long have you been there?

A. I went to work there the 19th of January, 1948.

Q. Have you worked there ever since?

(Testimony of Joseph William Francis.)

A. Except for the period that the mill was shut down, April 9th to about the 19th of July, I guess.

Q. Have you ever been a member of Local M-271? A. You say, am I a member?

Q. Yes. A. Yes, sir.

Q. How long have you been a member?

A. Since shortly before the strike or the picket line.

Q. Were you present at the Union meeting April 9th by the I.W.A. members in 1948?

A. You mean the meeting the night before the picket line went on?

Q. Yes. A. Yes, I was.

Q. Tell us what happened at that meeting.

A. It wasn't a regular meeting because there was a lot of——

Mr. Andersen: Just a moment, to which I object as hearsay and irrelevant and incompetent, may it please the Court.

Mr. Banfield: If the Court please, the purpose is to show the reasons why the I.W.A. observed the picket line and did not go through it and why the mill shut down, their [301] actions at that time.

The Court: Objection overruled.

A. Well, as I say, it wasn't a regular meeting because it was just a general meeting of all the employees of the mill and there was a lot of discussion pro and con as to the legality of the picket line to be put on in the morning. Most of us just heard

(Testimony of Joseph William Francis.)

about it that afternoon. There were arguments about it and we decided——

Mr. Andersen: I object to narrative rather than conversation, may it please the Court. I think we should have conversation rather than the conclusions of the witness.

Q. How many men were there at this meeting, Mr. Francis?

A. So far as I know, the majority of the employees of the mill were there.

Q. One hundred?

A. I imagine closer to two hundred.

Mr. Banfield: May it please the Court, I think under such circumstances it would be impossible to tell what everybody said at the meeting and that we are entitled to generalize.

The Court: What isn't clear to me is why it is important to show the reasons they decided not to go through the picket line. It seems to me what is important is that they decided not to go through the picket lines, not the reasons by which they arrived at that; that it was instigated [302] and endorsed by the I.L.W.U., Local 16. The question is, did they encourage them? It seems to me the question ought to be directed to show that. At the present time the question is too general.

Q. Mr. Francis, when this meeting opened was there any report or anything submitted to the meeting of what happened previously?

A. To the best of my knowledge, no.

(Testimony of Joseph William Francis.)

Q. Was there any previous meeting of the I.W.A. in which any action had been taken?

A. I think there had been a week before or something.

Q. Were you there?

A. No, I wasn't a member of the Union at the time.

Q. But you were at the second meeting?

A. Yes.

Q. Was any report made at the second meeting as to what happened at the first meeting?

A. I tell you, it was such a jumbled mess I can't really say. One of them said if the picket line was put on there, we would be blackballed.

Mr. Andersen: I move that be stricken as hearsay, and incompetent, irrelevant and immaterial and not connected with the defendants.

The Court: It will be stricken if it is not connected with the defendants. [303]

Q. You don't remember the report of the previous meeting?      A. No, I don't.

Mr. Banfield: I am afraid the witness wouldn't be competent to testify to that. We can prove it by other means.

The Court: You mean he couldn't testify to what you mentioned a moment ago?

Mr. Banfield: No, because he didn't hear what went on.

Mr. Andersen: I might be able to assist counsel. I have a copy of the minutes of April 1.



(Testimony of Joseph William Francis.)

Mr. Banfield: I am not talking about a meeting of April 1, and I don't need your assistance, thank you.

The Court: Counsel should address their remarks to the Court.

Mr. Andersen: I am in error. I didn't know Mr. Banfield would flare up at an offer of assistance.

The Court: Are you through with this witness?

Mr. Banfield: If the Court please, that is all.

Mr. Andersen: I have just a few questions. Do you wish to read this? (Showing a document to counsel for plaintiff.)

#### Cross-Examination

By Mr. Andersen:

Q. I direct your attention——

Mr. Andersen: May this be marked for identification, [304] Mr. Clerk?

The Court: Defendant's Exhibit A.

The Clerk of Court: The exhibit has been marked for identification Defendant's Exhibit A.

Q. Mr. Francis, I want you to read this and see if you recognize what it is. Do you recognize that document, sir?

A. Well, as far as my recollection went, at that meeting of what took place at that meeting, this appears to be——

Q. Does it refresh your memory?

A. This appears to be——

Q. Does it refresh your memory?

A. No; it isn't exactly what took place.

(Testimony of Joseph William Francis.)

Q. I only asked you, sir, if you recognized the document.

A. No, I don't. I have never seen it before.

Q. Do the contents refresh your memory at all?

Mr. Strayer: Your Honor, please, I think counsel should not use the document to refresh his memory until——

Mr. Andersen: I have shown it to counsel.

Mr. Strayer: You haven't shown it as competent. It is not this witness's record. It is somebody else's record.

Mr. Andersen: This purports, may it please the Court, to be the minutes of I.W.A. Local 271, here at Juneau, the minutes of the meeting of April 1, 1948, and the minutes of April 9, 1948, the witness having previously testified he attended the meeting of April 9, at which minutes of the [305] previous meeting were discussed.

Q. Now, with that before you, does that refresh your recollection?

A. Yes, we discussed whether or not——

Mr. Strayer: Has your Honor ruled?

The Court: I don't think it has to be his record.

A. We discussed whether or not we would cross the picket line.

Q. First answer, does it refresh your recollection?

A. No, I haven't seen these records, I haven't seen them. We discussed whether or not we would cross the picket line.

(Testimony of Joseph William Francis.)

Q. Let me have it. I will examine you a little further. You have read this, have you, sir?

A. That is right.

Q. On the meeting of April 9, didn't the I.W.A. Local discuss a motion that was made on April 1 and carried unanimously, isn't that true?

A. As I tell you, a general discussion took place. Five or ten men were talking on the floor at once.

Q. At the meeting of April 9, a special meeting, didn't they discuss a resolution, or a motion, rather, at a special meeting, which had been passed unanimously at a special meeting of April 1. Didn't they do that; didn't they discuss that previous motion that had been unanimously carried?

A. Possibly. I don't recall too well. [306]

Q. At that meeting of April 1 wasn't the discussion, wasn't this motion passed, "Motion made and seconded to go on record to not load barges. We figure this work belongs to the longshoremen" and it was passed unanimously. Wasn't that motion discussed?

A. This meeting of April 1?

Q. Yes. A. I wasn't there.

Q. I know you weren't there. That is what you have stated, but on April 9 didn't they discuss the motion passed April 1 and wasn't that the purpose, to further discuss the motion?

A. That is right.

Q. And the question is, a motion which had previously been made and seconded, "To go on record to not load barges. We figure this work belongs to

(Testimony of Joseph William Francis.)

the longshoremen," that is what was discussed, wasn't it?      A. In a general way.

Q. And that previous motion had been passed unanimously by the Local?

A. By thirteen members, I think.

Q. On the meeting of April 9 which you attended, wasn't this motion made and seconded, "To take a vote on whether to cross picket line. Again a unanimous vote to honor picket line of" Local 16? Wasn't that passed by the 200 members [307] present?

A. It was, in this way. As I started to tell you, there was a general discussion as to whether the picket line was valid or invalid, whether the work belonged to us or the longshoremen. There was a general row, finally it was decided whether the picket line was legal or illegal, we wouldn't go through it until we knew more about it.

Q. That was unanimously passed, wasn't it?

A. Right.

Q. By the 200 members present. They decided for themselves they weren't going back to work, isn't that true?

A. That we wouldn't cross the picket line until we found out more about it. There was a lot of feeling for and against it.

Mr. Andersen: That is all. Thank you, sir.

Mr. Banfield: That is all.

(Witness excused.)

WILLIAM H. FLINT

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Will you state your name, please.

A. My name is Mr. William H. Flint.

Q. Where do you live? [308]

A. A mile and a half out the highway from Juneau.

Q. How long have you lived here?

A. Since March the 6th or 7th of 1947.

Q. And have you worked for the Juneau Spruce Corporation?      A. Yes.

Q. During what period of time have you worked for them?

A. I went to work for the Juneau Spruce on the second day of May, 1947.

Q. Until the present time?      A. Yes.

Q. Have there been any interruptions in that employment?      A. Yes.

Q. Now, Mr. Flint, are you a member of the International Woodworkers M-271?      A. I am.

Q. How long have you been a member of that Local?

A. Since the first part of April of 1947.

Q. And did you attend meetings regularly in 1947?

A. From April until about the first part of November I went at least once a month.



(Testimony of William H. Flint.)

Q. And after that?

A. Then from then until the first part of April, 1948, I don't believe I attended. I may have attended perhaps one meeting, or two, maybe.

Q. And then after that? [309]

A. After that I missed only one meeting.

Q. Now, Mr. Flint, have you had any positions with the Union as Committeeman or officer?

A. Yes, in about I would say, oh, May, 1947, I was elected a Shop Steward and I held that job until April. The tenth day of April, about eight p.m., I was elected to head the Union, President of the Union.

Mr. Andersen: What year was that, counsel?

Q. April 10 of what year, Bill? A. 1948.

Q. And you are still President of the Union?

A. Yes.

Q. Mr. Flint, were you present at a meeting sometime in the summer of 1947, at which I.W.A. Local voted to determine what work they would do on boats and barges?

Mr. Andersen: To which I object as incompetent.

Q. And longshoring for the Juneau Spruce?

A. I couldn't answer that by saying I did attend a meeting just that way. I recall it was brought up to the officers. There was some argument.

Mr. Andersen: I object to that as not responsive, may it please the Court, whether he attended a meeting.

(Testimony of William H. Flint.)

Mr. Banfield: I will withdraw that question.

Q. Do you remember attending a meeting in the summer of 1947, at which the longshoremen had a committee there to discuss [310] what work they would like to have?

A. No, I wasn't at that meeting.

Q. You were not there? A. No.

Q. Did you attend the meeting of the I.W.A. on April 1 of 1948? A. Yes.

Q. How many persons were there?

Mr. Andersen: To which I will object as completely immaterial, may it please the Court.

A. Fourteen men.

Mr. Andersen: Please instruct the witness when I make an objection to remain quiet.

The Court: Yes. You should not answer when there is an objection. Objection overruled.

Q. How many persons were there?

A. Fourteen men, if I recall correctly, counting the officers, and also there was a group from the Local 16.

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial as to how many.

The Court: Objection overruled.

A. There were also a group from the Local 16, I.L.W.U. I would say about five members of their Local.

Q. And at this meeting, did the I.L.W.U. members, were they present at the time you held your official meeting or [311] was it before or afterwards?

(Testimony of William H. Flint.)

A. They were there before we called our meeting to order.

Q. And what did they say?

Mr. Andersen: May I have—that is all right.

A. They were there for the reason——

Mr. Andersen: Just a moment. I will object to that. The question was “what was said,” not the conclusions and opinions of the witness.

The Court: Yes.

Q. Tell what was said.

A. They said that they wanted work——

Mr. Andersen: And a further objection. I would like to have the names of the people mentioned, rather than saying “five people.”

The Court: The names should be stated.

Q. Will you state who was there representing the I.L.W.U.?

A. I can state some, but not all, of them. There was Joe Guy, Orville Wheat—Orville Wheat, I can't swear to that. I will say I think, I think but I am not positive. Then there was Mr.—I know he was an old fellow, I can't recall his name—one of the gentlemen that was out in the audience, I don't know his name.

Q. Which man?

A. On the end of the long row there.

Q. Mr. Burgo? [312]

A. That is right. And others—I don't recall who was there.

(Testimony of William H. Flint.)

Q. Do you remember any members of the I.W.A. there?

A. James Gleaton, Goldsmith and Nels Lee and myself, of course.

Q. All right. Tell us what the longshoremen's representatives said at this meeting.

A. They said they wanted the work of loading lumber onto the Company-owned scows and they said that the other group of Committeemen who had been sent up there before and asked for lift work and hoisters were in error and were no longer on the Committee and they did not want carrier driver or lift driver, but they would get for us the wage scale for the men who drove the hoister trucks as long as they were loading the barges. They said they had a contract for the work with the old Company, before Juneau Spruce, and that they did not show us, but they showed us the withholding slips, income tax slips, from the Juneau Spruce, where they had worked for Juneau Spruce.

The Court: You mean Juneau Lumber Mills or Juneau Spruce Corporation?

A. Juneau Spruce. And then they asked if we would take a vote and give them an answer after our meeting.

Q. Did they say anything about this contract with the Juneau Lumber Mills being binding on Juneau Spruce? [313]

Mr. Andersen: I object, may it please the Court, as calling for a conclusion.

(Testimony of William H. Flint.)

Mr. Banfield: I asked if they said anything.

Mr. Andersen: Also it is very leading and suggestive.

The Court: It is leading and of course it wouldn't be proper to ask it in that form unless it appeared that the witness didn't remember.

Mr. Banfield: He said—he indicated that was all they asked for and I am refreshing his memory now. That is the purpose. I didn't ask it in any way to suggest the answer. It is true it can be answered "yes" or "no."

Mr. Andersen: I submit the inflection was very suggestive. I submit the objection is made.

The Court: I think you had better ask him if anything else was said before that.

Q. Do you remember anything else that was said at this meeting by the I.L.W.U. men?

A. Naturally, when they said they had a contract which carried over from the old Company, why, it would be the idea there would be that.

Mr. Andersen: I object and move it be stricken. It is simply a narrative on the part of the witness and he testified as to a conclusion and I might also add that is an argument on the part of the witness.

The Court: Yes; it is not admissible. Objection sustained.

Mr. Andersen: The answer may be stricken, your Honor?

The Court: Yes.

Mr. Andersen: Thank you.



(Testimony of William H. Flint.)

Q. Did they say anything about whether or not the contract of the Juneau Lumber Mills carried over to the new Company?           A. Yes.

Q. What did they say?

A. They said that whenever a company bought from another company they assumed the obligations of that company, which would be also their contract with them.

Q. Did the members of the I.L.W.U. say anything about your Constitution?

A. I think they mentioned the fact. Now, I couldn't swear to this one. They pointed out to us that our By-Laws did not cover barge loading or loading of any type, and after they left we did look it up in our By-Laws.

Q. But they brought up the subject?

A. I think they did. I am not positive of that.

The Court: You mean the By-Laws?

A. And Constitution for the Local Union.

Q. Did they say anything while they were there in regard to their practice otherwise or other places entitling them [315] to this work?

A. They said the work had always been theirs in this area and they had done the work for the Juneau Lumber Mills, and that work was the kind of work their Local did up and down the Coast and was a past practice of theirs to do longshore work.

Q. Did they say anything about what effect it would have on you men or did they say anything about picket lines on this meeting of April 1?

(Testimony of William H. Flint.)

A. They mentioned if they couldn't get the work otherwise they would have to picket the sawmill in order to get it.

Q. Was any statement made by the I.L.W.U. men as to what effect it would have on you men as workers if you went through the picket lines?

Mr. Andersen: I object, may it please the Court. In the first place, it is leading and suggestive. The witness went through the entire conversation. Now counsel says, did they say this or that? It is leading and suggestive and calls for a specific kind of answer.

The Court: Since the last question is on a new phase I think the witness should first be asked if they said anything with reference to the picket line.

Mr. Banfield: That has been answered, your Honor.

The Court: No, I think you just asked him—you have asked him in such a way, that is, the question is in such a [316] form that defense counsel objected to it.

Q. Let me go back to the previous question, Mr. Flint. Did the I.L.W.U. men say anything about the picket line?

A. I don't believe at that meeting that they stated anything about the picket line except the fact that they did not want us to go across that picket line.

Q. Did they say they would establish a picket line or would not?

(Testimony of William H. Flint.)

A. They did say they would establish a picket line if they couldn't get the barge loading.

Q. Did they say anything about what effect there would be on you men if you went through the picket line?

A. If we went through?

Q. Yes.

A. No, they didn't say anything about what would happen if we went through it at that time.

Q. What did the I.W.A. decide to do at that meeting about that work?

A. After they left we had about an hour's discussion, I would say, and then the President or Vice-President, acting President at the time, called for a vote on whether or not we would respect the jurisdiction of the I.L.W.U., Local 16, until more could be found out about the situation in case a picket line was established and the result of that vote was that thirteen men voted "yes" [317] and one man, I don't believe, voted at all.

Q. Now, Mr. Flint, in this discussion which the I.W.A. had, what factors influenced them in their decision; that is, what influenced you in your decision?

Mr. Andersen: That is immaterial, may it please the Court.

The Court: Yes, I rather think that is immaterial.

Mr. Banfield: If the Court please, I don't like to be argumentative. I would like to take an exception to the Court's ruling and ask a reconsidera-

(Testimony of William H. Flint.)

tion. I think it is entirely material for the witness to show the effect these representations of the I.L.W.U. had upon the members, to induce and encourage them to refuse to work.

The Court: Well, you have already brought out the factors.

Mr. Banfield: What they stated, but whether or not they believed or paid any attention to it——

The Court: You want to bring out that there were others? You have brought out that there was a thirteen to one vote, but not how, what the result of the vote was.

Mr. Banfield: If the Court please, we have showed what the I.L.W.U. represented to the Union. Now we want to show because of those representations or at least being influenced by those representations, that the I.W.A. decided not to go through the picket line and not work for their [318] employer and that is one of the fundamental things in this case, to show they were induced by the long-shoremen.

The Court: That is an inference the jury can draw. You have these facts that are brought out and they can appraise them and draw their own conclusions.

Mr. Banfield: I think the jury is entitled to know to what extent the I.W.A. was induced and encouraged by the I.L.W.U. One contention could be that they didn't believe it. Some other one might really be afraid of them and have felt that he was put on the ground where they might suffer.

(Testimony of William H. Flint.)

The Court: Well, you mean that there was some ground for their decision that hasn't been brought out?

Mr. Banfield: Not an additional representation by the I.L.W.U., but I want to show that the representations of the I.L.W.U. did, in fact——

Mr. Andersen: You are talking about Local 16, counsel; is that correct?

Mr. Banfield: Local 16, at this particular time, that Local 16's representations did, in fact, have an effect upon the action taken and did, in fact, induce and encourage the employees of the employer not to handle the products.

The Court: Isn't that an unavoidable conclusion?

Mr. Andersen: May it please the Court, I would like to assign the Court's conduct. The only physical facts we have here are what this witness stated. A few longshoremen went [319] up and talked about it. I think probably that the evidence is admissible so far as Local 16, but to go beyond and state a conclusion is error and this witness can't probe into the mind of anybody else or any other reasons which so far haven't been talked about. The longshoremen, Local 16, were there and made certain statements, and this witness testified to it. I think that closes the subject.

The Court: Unless there was a discussion of some particular ground presented by the Local 16,



(Testimony of William H. Flint.)

and that they gave it a lot of weight and that is what induced them to make their decision.

Mr. Andersen: As your Honor stated a few moments ago, it is only important or material whether or not they voted to go back to work. That is the only thing of importance. The rest is all immaterial, as I see it.

The Court: Do you wish to show that?

Mr. Banfield: Weight and credence.

The Court: To whom?

Mr. Banfield: To any or all.

The Court: You may show that if these grounds were discussed in such a way that it won't be a matter of speculation on the part of the witness.

Q. Were these various representations made by Local 16 discussed after the Committee from Local 16 left? A. Yes. [320]

Q. And do you know whether or not the representations made by Local 16 had any effect upon the members? A. Myself; yes.

Mr. Andersen: To which I will object, and I move that the answer be stricken. For the purpose of objection I ask the Court again to caution the witness not to answer when an objection is being made.

The Court: I think that the question should not go beyond eliciting the grounds upon which they made their decision.

Mr. Banfield: That is right. I am asking now if the representations made by the I.L.W.U. had any effect upon the final decision made.

(Testimony of William H. Flint.)

Mr. Andersen: I object to that as calling for a conclusion of the witness and hearsay, so far as the defendants are concerned.

The Court: You may answer if you know.

A. I know it influenced myself.

Mr. Andersen: I move that be stricken as not responsive.

The Court: The answer will be stricken.

Q. Did it influence you as a member?

A. Yes.

Mr. Andersen: I object to that as incompetent. May I again ask the Court to caution the witness.

The Court: I think it was immaterial. There was a majority vote and it would be the ground upon which the majority vote would be predicated that would be important, not what weight he gave to any particular facts.

Mr. Banfield: Obviously, if the witness is not permitted to testify what influenced the vote of the majority, he is going to have to testify what influenced his vote and we will call as many of the rest of the twelve as we can. We are precluded—I want this perfectly clear—from showing that the I.L.W.U. Local 16 representations had any effect on their decisions?

The Court: You have shown their representations and you have shown their decision, and now it seems to me that it is just a matter of inference as to what induced the decision.

Mr. Strayer: We shouldn't be put in the posi-

(Testimony of William H. Flint.)

tion of inference when we have positive testimony.

The Court: I ruled if you could show because of the discussion held there preceeding the vote what did make them make the decision, you can show that. That rule still stands. It appears now he can't speak for the others. He can only speak for himself. Now, if you consider it vital to your case since it is nearly noon, the Court will excuse the jury until two o'clock and you may make your offer in the absence of the jury.

Whereupon the jury was excused until two p.m. of [322] this day and retired from the courtroom.

Mr. Andersen: As long as there is no testimony being taken, I assume the witness also will be excused, your Honor?

The Court: Yes.

Whereupon the witness retired from the courtroom.

The Court: You may state what it is you desire to bring out by the witness.

Mr. Strayer: We consider that it is material, your Honor, to show the representations made by Local 16, I.L.W.U. did have an effect upon the minds of the members of I.W.A. in reaching their decision not to go back to work, and we contend we can prove that only by the witness on the stand to prove what the discussions were in the meeting of the I.W.A. after the I.L.W.U. left, discussions and sentiments, before the vote was taken.

(Testimony of William H. Flint.)

The Court: I ruled you could do that but I thought you wanted to go beyond. The majority action is precluded so far as what lay in this witness's mind. It sounds as though you wanted this witness to guess.

Mr. Strayer: I understand your Honor ruled out any testimony of what was said at the meeting after the Local 16 men left.

The Court: No; I ruled to the contrary. You could show whatever discussion was had preceeding the vote as distinguished from showing what the effect was on this person or [323] this witness's mind.

Mr. Banfield: I think the Court ruled we could show discussion brought out by the I.L.W.U.

The Court: Yes, so long as it was what the majority said and not merely what was in this witness's mind.

Mr. Strayer: May I get this? There were thirteen men voting on the motion to respect the picket line. It seems to me if all the other twelve men were here each should be allowed to say what influenced them because the sum total would indicate positively the reason for the action. If that is so, I should think each man present at the meeting would be allowed to express the effect on his mind of the representations.

The Court: The thirteen there would reflect the nature of this discussion?

Mr. Strayer: Very probably, if not certainly.

Mr. Andersen: May I be heard, your Honor? I

(Testimony of William H. Flint.)

love the parallel. There were thirteen members, and they call thirteen men. If they call thirteen men I would cross-examine them. At the next meeting this witness will testify there were two hundred men present. Mr. Strayer can call the two hundred men to testify here and I—and we, of course—can cross-examine. I love Alaska during the short time I have been here, Judge, but at the present time I have no intention of changing my residence and if we follow this line we will [324] be here *ad infinitum*. I think counsel misconstrues the law. The longshoremen came there and made certain statements. We certainly aren't bound, that is, Local 16 can't be bound, except by what they said. It doesn't make any difference what those people discussed in the meeting. It hasn't the faintest bearing on the ultimate conclusion at the meeting. Only what the longshoremen said, they can be bound by. The I.W.A. is not a party to the proceeding. What was discussed in camera is not our concern.

The Court: You make that additional objection to the one that it is hearsay?

Mr. Anderson: Yes, your Honor.

The Court: On the ground of competency?

Mr. Andersen: I beg your pardon?

The Court: On the ground of competency?

Mr. Andersen: Incompetent; yes.

The Court: I think it comes primarily within the rule or doctrine of *res gestae* and that is why I have been admitting it.



(Testimony of William H. Flint.)

Mr. Andersen: I can't see the application of *res gestae* at all because it isn't part of the things done within the doctrine of *res gestae*.

The Court: Isn't this one of the things done?

Mr. Andersen: Not under the doctrine of *res gestae*.

The Court: A matter of this kind has quite a scope. [325]

Mr. Andersen: I think it has a limited application.

The Court: I don't agree with you.

Mr. Andersen: *Res gestae*, as I understand, and I could be wrong, when something happens all of a sudden and people make exclamatory statements so soon after an event that there is no change of mind it is particularly spontaneous. Here, so far as *res gestae* is concerned, the testimony is so far that the men from Local 16 went up there before the meeting and had a conversation with, apparently, a Committee of the I.W.A. Then the witness testified the longshoremen left.

The Court: I understand all that.

Mr. Andersen: Then for one hour, may it please the Court, one hour, the I.W.A. discussed this and after they discussed it pro and con there was a unanimous vote.

The Court: I understand all that. It is not necessary to state it.

Mr. Andersen: It is not *res gestae* at all.

The Court: The charge is that they induced the

(Testimony of William H. Flint.)

employees to go out on strike. It goes to the principal fact of the case, and that is the ruling of the Court so far as the ruling of the Court is concerned. We will recess at this time.

Mr. Andersen: Before we recess, so I don't have to argue again, I understand the witness is permitted to testify what is in his mind? [326]

The Court: No.

Mr. Andersen: Or is it limited——

The Court: To what was discussed there.

Mr. Andersen: I needn't object again. I object on the grounds already stated.

The Court: Yes.

(Whereupon Court adjourned until two o'clock p.m. May 3, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the witness William H. Flint resumed the witness stand and the Direct Examination by Mr. Banfield was continued as follows:)

The Court: In the case of this witness I think there has been a lot of testimony as to conversations that might better have been eliminated, and as far as this witness is concerned you may ask him whether he knows what induced the action of his Union to which he testified, and if he answers that he does, then you may ask him what it was that induced the Union to take that vote, but as to any

(Testimony of William H. Flint.)

discussion leading up to it the Court holds that it is incompetent.

Q. Mr. Flint, do you know whether—do you know what induced the Union to take its vote at the meeting of April 1 and to decide to respect the picket line? A. Yes.

Q. Will you state what it was that induced them to do that? [327]

Mr. Andersen: Just a moment. I object for the reasons heretofore mentioned; that is, before the recess, and also upon the further ground that it calls for a conclusion and opinion of this witness, may it please the Court.

The Court: It calls for his knowledge. Objection overruled.

A. The fact that the longshoremen came to our Hall was the reason for having the vote, and the fact that they had told us they had a contract which covered that work and which would have been signed before our contract was signed, which I presume would therefore make our contract illegal or might cross it anyway. That caused the members to vote that the work should belong to them, also they stated it was their work in past practice and most unions go by past practice and therefore that would be their work on the basis of past practice, and the fact that they showed us withholding slips that they had worked for Juneau Spruce, that showed that they had been employees, and would therefore also be employees at the present time. That also in-

(Testimony of William H. Flint.)

fluenced the vote, and I could add something else, but it would probably be objected to.

Q. Now, did their representations which you testified to this morning, that they had this work all up and down the Coast and that the I.W.A. didn't have it, did that have any influence on your decision? [328]

Mr. Andersen: I object. The question was fully asked and answered.

The Court: I think all he can state is whether the representations made there is what induced them to take this vote.

Mr. Banfield: I am asking, if the Court please, if this particular statement made by the I.L.W.U. before the regular meeting of the I.W.A. as to coast-wise participation of the longshoremen had any influence.

The Court: I thought you brought that out.

Mr. Banfield: He said "past practice." I presume, here in Juneau.

The Court: All representations made for the purpose of inducing or apparently for the purpose of inducing favorable action on the part of the witness——

Mr. Banfield: We shall limit it strictly to what the I.L.W.U. represented before the meeting.

Q. Did that influence them?

A. Yes; the fact that the work of loading lumber——

Mr. Andersen: May it please the Court, the same objection to this line of questioning.

(Testimony of William H. Flint.)

The Court: The same ruling.

A. The fact that the work of loading lumber would be classed as longshore work because it was the act of handling cargo, and they stated to our meeting that they had and were [329] handling all the cargo on the West Coast and that this work was still the same kind of work, therefore it should remain in the scope of their jurisdiction.

Q. Now, Mr. Flint, did you attend a meeting of the I.W.A. members and any other persons who might have been there on April 9, 1948?

A. I did.

Q. Tell me where the meeting was, when it was and who was there.

A. The meeting was in the C.I.O. Hall in Juneau, at six o'clock in the evening, and all the employees of the Juneau Spruce were allowed to attend, in fact anyone in the Hall then of the Juneau Spruce who wished to attend were able to attend.

Q. And did the Company give the employees time off for this meeting?

A. Yes. The night shift starts at six o'clock. They came up to the meeting then they worked an hour or so later in the morning to make up for it.

Q. In other words, the shift was just delayed for a time.

A. Was delayed.

Q. At this meeting tell us what took place.

Mr. Andersen: The same objection, may it please the Court.

The Court: Objection overruled. I think first he ought to state whether any representatives of the



(Testimony of William H. Flint.)

defendants were there at the meeting.

Q. Do you know of your own knowledge whether there were any members of Local 16 there?

A. To the best of my knowledge, there were no members of Local 16 in the Hall.

Q. Could they have been there without your knowing? A. Yes.

Mr. Andersen: I object, may it please the Court.

The Court: Objection overruled.

Q. How many——

Mr. Andersen: Did the Court understand the question? Could there have been any?

The Court: The matter is of no importance. They can't bind you.

Q. How many persons were at the meeting would you say, Mr. Flint?

A. I would say perhaps 180, 150 maybe at the least.

Q. Was there action taken at the meeting as to whether or not the employees of the Juneau Spruce Corporation would cross the picket line?

A. Yes.

Q. How was that action taken?

A. After very much argument and oral discussion with several men on the floor at a time, the man who ran the meeting [331] got kind of disgusted with the way the meeting was going.

Mr. Andersen: I object.

The Court: Yes; tell what was done.

Mr. Andersen: May that be stricken, your Honor?

(Testimony of William H. Flint.)

The Court: Yes.

A. At the end of the meeting the man in charge of the meeting asked "Are we or aren't we going through?"

Mr. Andersen: I object to that also, as incompetent.

The Court: Objection overruled.

A. The man in charge of the meeting asked "Are we or are we not going through the picket line in the morning if it is established?" He said "All who are not going through, please stand." To the best of my knowledge, every man stood up, at least a great majority. That ended the meeting.

Q. Now, Mr. Flint, on April 10 did you go down to the mill? A. Yes.

Q. Was there a picket line there? A. Yes.

Q. Who was picketing?

A. I don't recall the names of the men, but there were signs on the pickets stating that it was I.L.W.U. Local 16, two of them.

Q. And how long did that picket line stay there?

A. It stayed there from that date up until right now, at the present time.

Q. Do they now—let me ask you this: when they first started to picket did they picket twenty four hours a day or just part of the day?

A. They picketed all day, twenty four hours a day.

Q. What do they do now?

A. They start picketing about seven o'clock and they quit about four forty-five or five o'clock.

(Testimony of William H. Flint.)

Q. In other words, they start in the morning and quit in the late afternoon?

A. That is right.

Q. Is that—tell me what hours the men work there at the mill now.

A. The men work from eight o'clock until half past four.

Q. And do you know how long the mill was shut down after the picket line was established?

Mr. Andersen: I think it is cumulative. It has been testified to about four times already.

The Court: It is not in dispute, is it?

Mr. Banfield: I think it is, and at least the jury should have it in mind, the dates they were there and the activities.

Mr. Andersen: Four witnesses already have testified that the mill hasn't worked between April 10 and July 19 or 16. [333] I think four people testified to it so far.

Mr. Banfield: I would like to ask the question. The mill hasn't operated since October 19 of 1948, to the present time. Maybe I could refresh my memory on that. I don't know.

The Court: Well, apparently there is no issue here as to the fact that the mill has been closed and the time that it has been closed has been established by one or more witnesses. That ought to be enough.

Mr. Banfield: It has not been established by any witness as to how long the mill operated after July 19.

(Testimony of William H. Flint.)

The Court: You may establish what hasn't been established then, in that respect.

Q. After July 19, Mr. Flint, how long did the mill operate? A. Until October 11.

Q. How many shifts a day? A. One.

Q. And after October 11 did it operate?

A. No.

Q. Now, Mr. Flint, after the picket line was established did the I.W.A. have any more meetings?

A. Yes.

Q. If so, were there very many present?

A. We had practically the whole membership for the first few weeks and as time went on it dribbled down to perhaps ten [334] per cent.

Q. How often did you have meetings?

A. Immediately after this dispute, we had a regular meeting the second Saturday of every month and the fourth Friday, and in each week in between we had a special meeting.

Q. Did the I.W.A. of which you were President at that time, make any investigation to determine the truth or falsity of these statements made by the I.L.W.U. members in the meeting of April 1?

A. Yes.

Q. And what did they find?

Mr. Andersen: To which I object as incompetent, irrelevant and immaterial and calling for a conclusion and opinion of the witness, may it please the Court.

The Court: I think the preferable way to get at

(Testimony of William H. Flint.)

it would be to show the action taken by the witness's Union after the investigation of the representations made by the defendants.

Mr. Banfield: If the Court please, the Court has excluded any testimony as to why they took the action they did afterwards; in other words, the findings and causes for taking the action.

The Court: It is the result again, rather than the process, by which they investigated and made their findings. I think we will be here interminably unless we stick to the [335] results rather than the means of arriving at the results. If, as this witness has intimated, the Union made an investigation later on these representations and then took other action on the basis of their findings, why that can be testified to, but as to what they discovered in the process of investigation, I don't think that is competent. You can ask the witness if he found or the Union found whether the representations were true or false.

Mr. Andersen: May it please the Court, that would call for the conclusion and opinion of the witness.

The Court: Nearly everything would call, so far as this kind of testimony is concerned, for an opinion. Objection overruled.

Q. Did the Union find these representations were true or false?           A. False.

Q. Were they all false?

A. We asked them to show us where they did



(Testimony of William H. Flint.)

have—show us some written form of a contract where they did have the bargaining rights for that type of work. That contract was never shown to us. Also, as far as doing that kind of work at the Juneau Spruce before, or at the Juneau Lumber Mill, before we discovered that this was the first case of a Company-owned barge——

Mr. Andersen: I move that be stricken as hearsay and a conclusion and opinion of the witness.

The Court: His discoveries—he may state what was [336] done but not as to his or somebody else's opinions or conclusions during the process of the investigation.

Mr. Andersen: That is all that he is talking about.

Mr. Banfield: Your Honor, he answered once that it was false.

Mr. Andersen: It is clearly an opinion and conclusion of the witness.

The Court: You can cross-examine him on it. He has testified his Union found after investigation that these representations made to them were false. You can cross-examine.

Mr. Andersen: He doesn't show that he was on the Committee that made the investigation, your Honor.

The Court: You may cross-examine him. You may state what was done but so far as detailing what this person or that person said or thought during the investigation is not competent.

(Testimony of William H. Flint.)

Q. Go ahead and state what facts were established by the investigation to be false.

Mr. Andersen: I don't want to be presumptuous, may it please the Court. From what your Honor said, he should strike the word "false." That kind of evidence——

The Court: I have already ruled on that. Proceed.

A. As I said, we found this was the first case of a Company-owned barge being loaded at the Juneau Spruce, therefore there was no past practice on that particular type of work. [337] We also found that this same type of work, with—in other words, the loading of lumber on Company-owned scows, with Company-owned gear, was being done in the States by our Locals, I.W.A. Locals in some places.

Mr. Andersen: I move that be stricken as having nothing to do with the representations made by the I.L.W.U. Local 16.

Mr. Banfield: If the Court please, the testimony was that at the meeting of April 1 the I.L.W.U. represented they did all of the loading of this type up and down the Pacific Coast.

The Court: After investigation it was found to be false?

Mr. Banfield: This is corroborating it, in other words.

Q. Now, Mr. Flint, about May 8, 1948, did you have any meetings with any members of Local 16 or any representatives of the I.L.W.U. International

(Testimony of William H. Flint.)

regarding the settlement of this dispute or the continuation of it?      A. Yes.

Q. Now, tell us what meetings you had and what occurred and who was present and where. Start out with when, who and where.

A. We had a meeting on May 8 about four p.m. in the C.I.O. Hall in Juneau with Local 16 members, Vern Albright, [338] International representative of the I.L.W.U., myself and our Committee members, and Virgil Burtz, who is the Assistant Research Director of the I. W.A.

Q. And where was this? At the C.I.O. Hall?

A. That is right.

Q. Tell us now, what did the I.L.W.U. have to say at that meeting?

A. The main idea of the meeting was to see if we could settle the dispute and get the picket line removed and get our members back to work. It was more or less a meeting for our representative to find out what the case was about—he arrived on the plane that day—he got it from the I.L.W.U. and from us, on both sides, so he could investigate it and he also got the assurance from the I.L.W.U. in case this dispute would come to the point that it was deadlocked and nothing was being done, that they would remove their picket line and allow our Local in, our Union people.

Q. Did the I.L.W.U. promise that?

A. Yes.

The Court: Who, on behalf of the I.L.W.U. promised that?

(Testimony of William H. Flint.)

A. All the members that were there at the meeting from the I.L.W.U.

The Court: Are you speaking of the Local or the [339] International?

A. Local 16 and also Vern Albright, the International representative.

The Court: That is all.

Q. Where is Mr. Burtz from, where does he live?

A. He lives in Oregon.

Q. He lives in Oregon?

A. Portland, Oregon, is his home.

Q. And now, did Mr. Garst come on the scene about that time?

A. Mr. Garst arrived about a week or little less than a week later.

Q. Who was he?

A. He was representtaive of the United States Mediation and Conciliation Service.

Q. Now, did you have a meeting with him?

A. Yes.

Q. Tell us about the meeting that you had with Mr. Garst.

Mr. Andersen: I object to that as hearsay, may it please the Court.

The Court: Was it part of the same meeting?

Mr. Banfield: No, Mr. Garst arrived a week later.

The Court: I think the objection will have to be sustained.

Q. Was there any representative of the Local or the International at this meeting? [340]

(Testimony of William H. Flint.)

A. Vern Albright was there.

Q. Pardon?

A. Mr. Albright, the International representative.

Q. And where did the meeting take place?

A. The first meeting took place in the hotel room of Mr. Garst, at the Baranof Hotel.

Q. There was yourself, Mr. Garst and Mr. Albright? Was there anyone else?

A. Virgil Burtz.

Q. What was said after you arrived at this meeting?

Mr. Andersen: Could I have the date of this meeting?

Mr. Banfield: It is identified.

Q. Was it right after Mr. Garst arrived?

A. Yes; the day he arrived, May 14 or 15, somewhere in that area.

Q. For the sake of convenience, we will call this the meeting of May 14.

A. All right.

Q. At this meeting on May 14 what was said by the I.L.W.U. and its representative, Mr. Albright?

A. I will have to lead up to that before I could answer the question.

The Court: Just state what occurred there.

A. I arrived and the meeting was already going for several hours or minutes, whatever it was, anyway before I got there. [341] It was explained to me by Virgil Burtz that a letter was being written. E. H. Card was writing a letter to the Company and



(Testimony of William H. Flint.)

outlining the jurisdiction of the two Locals and that he was going to have the letter brought back to the Baranof Hotel and Mr. Albright and myself and Mr. Burtz and Mr. Garst would look the letter over. Well then, the letter arrived and the jurisdiction was outlined.

Q. Was Mr. Albright there when the letter arrived?

A. Yes, and Mr. Albright read the letter and stated that one line which was in it was not the way it ought to be and would like to have it changed, and so we asked him if he would put it down as he wanted it and which he did, and he said if that was changed exactly the way it was written down that he would agree to it, so the letter was sent over to the Company again and that time——.

Q. For what purpose?

A. To have this line re-written, and at that time Mr. Albright went back to his own hotel room.

Q. Now did—was the letter returned there to the hotel? A. Yes.

Q. Did you hear Mr. Burtz communicate with Mr. Albright? Do you have the letter or a copy of it, Mr. Flint? A. Yes.

Q. Could we see it? [342]

The Court: What are we waiting for now?

Mr. Banfield: For counsel to see the letter.

Mr. Andersen: I assume my objection runs to this testimony as incompetent and irrelevant. The entire testimony; I assume the same objection may run to it?

(Testimony of William H. Flint.)

The Court: Yes. Is this the letter the witness testified to a moment ago?

Mr. Banfield: Yes. I would like to ask Mr. Flint one question.

The Court: You are offering it in evidence now, aren't you?

Mr. Banfield: Yes.

The Court: It may be admitted and marked.

Mr. Andersen: I object to this as incompetent, irrelevant and immaterial, may it please the Court, and hearsay.

The Clerk of Court: This will be Plaintiff's Exhibit 6.

Q. Now, Mr. Flint, is this the letter Mr. Albright agreed to, that is, the terms of it?

A. That is right.

Q. And that is the final draft?

A. That is the final draft.

Mr. Andersen: I move the words "agreed to" be stricken as an opinion and conclusion of the witness, may it please the Court. [343]

The Court: Objection overruled.

Mr. Banfield: I would like to have the record show the letter, concerning which the witness was just questioned, is Plaintiff's Exhibit No. 6. I would like to read the letter at this time to the jury. "May 14, 1948. Mr. Virgil Burtz, International Woodworkers of America, CIO Juneau, Alaska. Dear Sir: Relative to your inquiry and request made in the presence of Commissioner Garst with respect to

(Testimony of William H. Flint.)

work requirements under our contract with Local M-271, IWA-CIO, we wish to advise as follows: All work on Company equipment and Company material is to be performed by Company employees under the terms of our contract with Local M-271. This includes the loading and unloading of Company barges or scows with lumber or other materials belonging to the Company, on Company owned or controlled property. We will not permit our employees to work on equipment or means of transportation belonging to other parties. This would mean that in the case of commercial steamships having the necessary equipment to load with, our employees would deliver the lumber with our equipment to ship's side where their work would end. Loading would be done by persons employed by the steamship over whom we would have no jurisdiction. In the case of unloading of any material consigned to Juneau Spruce and shipped by commercial steamship, unloading would be done by persons employed by the ship and our employees would not be permitted to perform the work. [344] "Once the materials or supplies had landed on our dock and the ship's tackle, (nets, gear, pallet boards etc.) are released our employees would perform the necessary work from that time on. In the case of cannery tenders or other boats having no equipment to load with we would use our crane and whatever men were necessary to that operation, but would not permit our employees to go aboard the boat to perform

(Testimony of William H. Flint.)

any work. Handling of lumber or box shook on board the boat would have to be done by persons employed by the boat, presumably longshoremen. In event our employees decide to return to work you have our assurance that there will be no discrimination against any of them because of their having engaged in union activity, or because of their having refused to cross the picket line at our plant. Very truly yours, Juneau Spruce Corporation, By E. H. Card."

Q. Mr. Flint, do you have the original copy of that letter?      A. No. I do not.

Q. Does the Union have it in its files?

A. I doubt it very well.

Q. It was addressed, I believe, to Mr. Burtz?

A. That is right.

Q. Have you ever seen the original since this time?      A. I can't recall having seen it.

Q. Now, after this letter arrived at the hotel, did you hear anyone communicate with Mr. Albright?

A. Yes.

Q. How was that communication made?

Mr. Andersen: Oh, now, just a moment. I will withdraw the objection for the moment, except that I am going to object on the ground that it calls for a conclusion and opinion, may it please the Court.

Q. Just state what was done.

A. Mr. Albright went over to his own hotel so when the letter came back from Mr. Card, why there had to be a phone call made to get ahold of

(Testimony of William H. Flint.)

Mr. Albright again. This was made by Virgil Burtz from his room in the Baranof. I listened while he called Mr. Albright. He told Mr. Albright that the letter had come back.

Mr. Andersen: I move that be stricken as hearsay and a conclusion and opinion of the witness.

The Court: Objection overruled.

A. He told him the letter had come back, and would like to have him sign it and that we get this thing all cleared up. Mr. Albright said something, I don't know what, and Burtz said "What has the International got to do with this?" and Mr. Albright said something else and Mr. Burtz then asked me if we could have a meeting that evening of Mr. Albright and Local 16 and I said "Yes" and he talked on the phone again and told Mr. Albright that there would be a meeting that night in his room in the Gastineau, [346] Mr. Albright's room in the Gastineau.

Q. Now, did you have a subsequent meeting with Mr. Albright? A. Yes.

Q. When was that?

A. That took place that same evening in Mr. Albright's room in the Gastineau Hotel.

Q. And who was present?

A. Mr. Albright, several members from I.L.W.U. Local 16, John Olafson——

Q. Who was John Olafson?

A. Secretary at that time of the I.F.A.W.A. or something.



(Testimony of William H. Flint.)

Q. A union?

A. Yes, C.I.O. A fishermen's local.

Q. A fishermen's local union?

A. That is right.

Q. Who else was present?

A. And Virgil Burtz and myself and there was some other members of our Local, I don't remember the names.

Q. Was Mr. Garst there?

A. Yes, Mr. Garst was there.

Q. What happened at that meeting?

Mr. Andersen: The same objection, may it please the Court.

The Court: Mr. Albright was present at that meeting? A. Yes. [347]

The Court: Go ahead.

A. We asked Mr. Albright why he wouldn't sign the letter and he said that he had a phone call from his International and also received a letter, which he said had made things, well, different, and it wouldn't work out if he signed the letter like he was going to do in the afternoon.

Q. Did he refuse to sign the letter?

A. Yes.

Q. And did he state to whom this letter had come?

A. If I recall correctly, he had received one and also the Local had received a—the Local, of that I am not positive. One or the other received a letter.

Q. Did he say who the letter had come from?

(Testimony of William H. Flint.)

A. From the International Union.

Q. Did he say anything else about any reasons for not doing this?

A. He stated he received word from another sawmill in Alaska, Sitka sawmill where the A.F.L. had the bargaining rights for the sawmill and that they were attempting there to take over the barge loading away from the longshoremen in that port also, and that if he had signed that letter that that would have given them an opportunity to take the barge loading away from the longshoremen in Sitka.

Q. Now, during the period from April 10 until July 19 were there any other efforts made in dealing directly with the [348] I.L.W.U. to settle this dispute?      A. Yes.

Q. Just tell us what they were.

A. We had several meetings and we offered once that we would put the dispute up to the National C.I.O., a jurisdictional dispute, the C.I.O. council.

Mr. Andersen: May I have the time please and the persons present at this meeting?

A. I believe that was made quite a few different times.

Mr. Andersen: May it please the Court, may I have counsel lay a proper foundation?

The Court: Yes. The time ought to be fixed for it.

A. As near as I can remember, it was made by Virgil Burtz after he arrived. He arrived May 8 and it was perhaps a couple of days later, the eleventh of May, I would say probably.

Q. Was that done at a meeting with I.L.W.U.

(Testimony of William H. Flint.)

members?

A. I think it was an offer to Mr. Albright.

Q. Do you know where the meeting was, where the offer was made to Mr. Albright?

A. From the time that Burtz arrived here he spent every day with Mr. Albright. I was with them practically all the time myself and the offer could have been made any time.

Q. You don't know just what time it was?

A. No. [349]

Q. Do you know definitely the offer was made?

A. Yes, I know it was made.

Q. Explain just where the C.I.O. comes into this offer.

A. Well, the fact that both Locals in this dispute are C.I.O. Locals and are both under the same National Union and ordinarily if there is some dispute between a couple of C.I.O. locals or International Unions, either one, it would go up before the C.I.O. itself and they would settle the dispute as to who had jurisdiction.

Q. What was the decision, that is, what did Mr. Albright say about this proposal?

A. He said "No."

Q. Now, you testified that the I.L.W.U. had offered to pull off the picket line if things got too tough, and did the I.W.A. ever take them up on that offer?

A. Yes.

Q. When was that?

A. We asked them several different times about that, from time to time.

(Testimony of William H. Flint.)

Mr. Andersen: Could I interrupt? The I.L.W.U., you mean I.L.W.U. Local 16?

Mr. Banfield: I will have to ask the question differently, counsel.

Q. Did you ever submit a proposal to either Local 16 or the International, and if so, which, to have them pull off [350] the picket line because things were getting too tough in the Union?

A. Yes.

Q. Who did you submit that to, the Local or International?

A. Mr. Albright and the Local, both.

Q. And what was the answer you got back from Mr. Albright?

A. Usually it was that we wait a little while and see if something happened, and because when we asked they would agree to pull their picket line.

Q. And did they follow through on that?

A. No, because——

Mr. Andersen: May it please the Court, I move that be stricken in its entirety. He started out to talk about Mr. Albright and then lapsed into plural terms and I don't know who he is talking about or to whom. May it be stricken, your Honor?

The Court: It should be made a little more certain, but any incidences of that kind can be taken care of on cross-examination.

Mr. Andersen: We will be put to extensive cross-examination, your Honor.

(Testimony of William H. Flint.)

The Court: No more so than counsel will be put to on direct.

Q. Mr. Flint, who promised to pull off the picket line?

A. Mr. Albright and the delegation from Local 16. [351]

Mr. Andersen: Could I have the time and place please?

Q. Do you know about when that was, you know it was after the picket line was established?

A. That is right.

Q. Before you went back to work? A. Yes.

Q. Place it as closely as you can in between.

A. I would say on May 8 when we had our meeting that afternoon.

Q. Now, did they pull off the picket line as promised? A. No.

Q. Did they promise to take it off right away or sometime in the future?

A. They said if it got to the point where our Local, well, would blow up and there wasn't any members left—in other words, our Local would be out of business—they would pull their picket line to save our Local.

Q. Did they say they would do that at your request or whenever they felt like it?

A. Whenever they felt it got to the point where we were going broke.

Q. Did you, pursuant to that agreement, inform them of the conditions in the Local? A. Yes.



(Testimony of William H. Flint.)

Q. And what did you tell them? I am speaking about Mr. [352] Albright. What did you tell them?

Mr. Andersen: I object.

The Court: You should be specific.

Q. Who did you tell it to?

A. I told it to Mr. Albright and several members of Local 16 at various times.

Mr. Andersen: May I have the time please, may it please the Court?

The Court: I assume he will follow it up.

Q. Identify it as well as you can; was it a month after May 8 or a week?

A. I could give you perhaps a hundred different times if I could recall all of them.

Q. Tell us one of them?

A. One I know of for certain was a week before we went back to work.

Mr. Andersen: Do I understand the witness to say he talked to Mr. Albright then?

A. That was a meeting of Mr. Albright and Local 16.

Mr. Andersen: Read the answer please, Miss Reporter.

Court Reporter: "One I know of for certain was a week before we went back to work."

Mr. Andersen: A week before July 19. I see.

A. No, that is not correct.

Mr. Andersen: Pardon me. I am just having your [353] answers read.

Q. When was it that you told——

(Testimony of William H. Flint.)

Mr. Andersen: It has been asked and answered. He testified it was a week before he went back to work, July 19. It has been asked and answered, may it please the Court.

A. No.

The Court: He has indicated there is apparently a mistake about July 19. You may correct your testimony.

A. All the mistake here is that the mill started operation July 19. That was not the date when our Union went back to work at the sawmill.

Q. All right. When did you men first go back to work? A. The sixth day of July.

Q. You say it was about a week before that?

A. That is right.

Q. Who was present when you told him?

A. Leonard Evans, who at that time I believe was with the Labor Department, and members of Local 16, Mr. Albright, myself and my Committee members.

Q. Where was the meeting?

A. In the C.I.O. Hall.

Q. And what did you tell them?

A. I told them it had got to the point where our Local was going out of business because our members were leaving town. There was no work for them, and if it kept on very [354] long, why we wouldn't have any Union.

Q. Did you make any further requests?

A. I asked them to pull their picket line and leave us go back to work.

(Testimony of William H. Flint.)

Q. What reply did you get to that?

A. They said "Yes."

Q. They agreed to pull it? A. Yes.

Q. Who agreed to pull it?

A. Between Mr. Albright and the Local boys.

Mr. Andersen: I move that be stricken as not responsive.

Q. How many people said it?

A. In a meeting of that type they always have one man who is spokesman for the whole group.

Q. Who was spokesman?

A. Mr. Albright.

Q. On whose behalf was he speaking?

A. On behalf of Local 16, and seeing as he was a representative of the International, I imagine——

Mr. Andersen: I move that be stricken.

The Court: Read the witness's answer.

Mr. Andersen: After the word "seeing" I move it be stricken.

The Court: I don't know what the answer was. Will [355] you read it?

Court Reporter: "On behalf of Local 16, and seeing as he was a representative of the International, I imagine——"

The Court: Well, perhaps what he imagined should not be stated.

Q. Was the picket line pulled? A. No.

Q. Was any reason given to you by Local 16 or by Mr. Albright? A. Yes.

Q. What was the reason?

(Testimony of William H. Flint.)

A. At that meeting——

Mr. Andersen: May I have a foundation laid for this meeting, please?

The Court: It was the same meeting.

Mr. Andersen: I understood it wasn't. I understood counsel to refer to another meeting.

Q. They promised at a meeting a week before you went back to work that they would pull the picket line?

A. That is right.

Q. When they refused to do it——

Mr. Andersen: That assumes something not in evidence.

The Court: He testified they refused to do it.

A. I don't believe I testified that, your Honor. I testified the picket line was not pulled. [356]

Q. Now, I ask you, was any reason given you for not pulling it? Was there a reason given?

A. Yes.

Q. When was it given to you?

A. At that meeting.

Q. At that same meeting?

A. The same meeting.

Q. The same night?           A. The same night.

Q. All right. By whom?

A. That was—the whole thing wasn't just a case of "we will pull the picket line." It was a plan whereby the picket line could be pulled under certain conditions and the fact that we did not agree to that was why the picket line was not pulled.

(Testimony of William H. Flint.)

Q. They agreed to pull the picket line and then——

Mr. Andersen: I object.

Mr. Banfield: Wait until I am through.

The Court: It embodies the answer.

Q. Do you know if the conditions under which they would pull the picket line were imposed in advance or were imposed after they agreed to pull it?

A. The agreement was, "we will pull the picket line if our conditions go on as written out there."

Q. They conditionally promised to pull the picket line? [357]            A. That is right.

Mr. Andersen: I move that be stricken. The witness states it was written up. The writing would be the best evidence.

The Court: That is true, the writing should be produced.

Q. Where is the writing?

A. I imagine it was ripped up after the meeting and put in the wastebasket, seeing as it wasn't any good.

Mr. Andersen: I move that be stricken as an opinion.

The Court: Objection overruled.

Q. Did you keep a copy?            A. No.

Q. Do you know where there is a copy?

A. No. It was written. There were pictures and marks on it and it wouldn't be a legal document whatsoever.



(Testimony of William H. Flint.)

Mr. Andersen: I think that is for the Court to determine. There is no foundation.

The Court: I guess he refers to some peculiar chart.

Q. Mr. Flint, did you take a trip in the fall of 1948?      A. Yes.

Q. How long had you worked at the mill before you took this trip in the fall of 1948?

A. I stated before I worked from the second day of May for the Juneau Spruce Corporation until now. [358]

Q. From the second day of May, 1947?

A. That is right.

Q. In the summer of 1948 before you took this trip, do you know whether or not there were any barge loads of lumber shipped from the Juneau Spruce Corporation?

A. Before I took the trip?

Q. Yes.      A. In the fall of 1948?

Q. Yes.

A. There was a barge load at the Juneau Spruce; yes.

Q. Do you know where that barge went?

A. I merely saw the barge going out of the Channel and I knew—I mean I was told by different people in the office of the Juneau Spruce that it was going down to Prince Rupert.

Q. Do you know where it actually went?

A. I do not know actually myself. All I know is hearsay.

(Testimony of William H. Flint.)

Q. Do you know whether or not that barge was unloaded or not?

A. No, it was not unloaded.

Mr. Andersen: I move that be stricken, may it please the Court, as a conclusion and opinion of the witness, and I further object——

The Court: He says "I know."

Mr. Banfield: He said, "No, it wasn't unloaded."

Q. Where did you see the barge not unloaded?

Mr. Andersen: That is getting back to the question of what the witness knows. I told your Honor earlier that throws the door wide open as to what a person knows. Whether something was done or not depends on a proper foundation. To simply say, "Do you know"—there is no foundation for knowledge, may it please the Court.

The Court: It is just as simple to say, "I knew the sun was shining a while ago." I think where the witness is asked——

Mr. Andersen: The question would be, "Did you see the sun shining?"

The Court: He asked in those terms.

Mr. Andersen: I want to further object. As I indicated the other day Prince Rupert is in Canada. Our position is that anything that happened or may not have happened in Prince Rupert is not material to this case.

The Court: I rule now as I did then. It is evidentiary and admissible. Proceed.

(Testimony of William H. Flint.)

Q. Did you ever see this barge after that?

A. Yes; I saw the barge.

Q. Where?

A. I saw it in Tacoma, Washington.

Q. Was it still loaded? A. Yes.

Q. Was it still loaded with the same lumber and in the same [360] manner as when it left here?

A. Yes.

Q. Did you make any investigation there to determine why it had not been unloaded?

A. Yes.

Q. What did you find?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial and hearsay.

The Court: Is it based on hearsay?

Q. Who did you talk to about it?

A. I talked to the I.L.A., that is the A.F.L. longshoremen.

Q. What is the I.L.A.?

A. International Longshoremen's Association.

Q. What did they say about it?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial and heresay.

The Court: Objection sustained.

Q. Did you ask them to unload the barge?

Mr. Andersen: The same objection, may it please the Court.

The Court: Objection overruled.

Q. Did they agree or refuse—

Mr. Andersen: I object. The same thing, hearsay.

(Testimony of William H. Flint.)

The Court: Objection overruled. Did they unload it or did they not? [361]

A. They did not.

Q. Mr. Flint, before all you men went back to work in July of 1948, did they take any action as a Union to decide whether or not the men would return to work? A. Yes.

Q. Tell me, was that action taken at a meeting?

A. Yes.

Q. And what did they decide to do?

A. They decided that they would go back to work.

Q. Now, when they returned to work, did all of the members of the I.W.A. return to work?

A. No.

Mr. Andersen: I object to that as irrelevant, incompetent and immaterial.

The Court: Objection overruled.

Q. About how many members did you have at that time? A. Oh, I would say forty maybe.

Q. How many members of those forty do you think went back to work?

A. I got your first question wrong. I gave the answer what we actually had, who went back to work.

Q. How many members of the I.W.A. were holding cards in good standing at that time?

A. About a hundred and fifteen or twenty were holding the cards, I suppose. [362]

Q. How many went back to work on or immediately after July 6?

(Testimony of William H. Flint.)

A. Oh, about forty I would say.

Q. Now, in the course of time, did more come back to work, more of your members?

A. You are talking about which date?

Q. After July 6. You say about forty went back to work, right away.

A. I got mixed up again. The sixth of July we went back, the mill was not ready for operation, therefore only a small amount of men went back to repair the mill so it could operate. I would say about eleven went back on the sixth to get the mill ready, and on the nineteenth of July when the mill was ready for operation there was the other number I mentioned went back to work and then after that date I doubt if any more of our men came back to work.

Q. Now, do you talk to the men, the members of the Union, about why they don't come back to work?

A. Yes.

Q. And why don't they come back?

Mr. Andersen: I object to that as hearsay, may it please the Court.

The Court: Why?

Q. Why is it that the members of the I.W.A. who are not working there but who did work there before the strike, [363] why is it they do not come back to work?

The Court: If he knows——

Mr. Andersen: That calls for an opinion and conclusion of the witness.

The Court: Objection overruled.



(Testimony of William H. Flint.)

A. They tell me if they come back they have to cross the picket line, therefore they do not wish to do that.

Q. Were there some men who came back after the nineteenth of July who were not members of your Union but who had worked there before?

A. I don't believe so.

Q. Are there any non-Union men working down there now?      A. Yes.

Q. Have you talked to non-Union men who worked there before the picket line was established and immediately before, who have not returned to work?      A. No.

Mr. Andersen: Same objection, your Honor.

The Court: What is the question? Repeat the question.

Court Reporter: "Have you talked to non-Union men who worked there before the picket line was established and immediately before, who have not returned to work?"

The Court: Answer that "yes" or "no."

A. No. [364]

Q. Now, how long did you say the mill operated after it got started in July?

A. Until October 11.

(Whereupon Court recessed for ten minutes, reconvening as per recess with all parties present as heretofore and the jury all present in the box; whereupon the witness William H. Flint resumed the witness stand and the Direct Ex-

(Testimony of William H. Flint.)

amination by Mr. Banfield was continued as follows:)

Q. Mr. Flint, what is the present official position of Local M-271 with respect to claiming the right to load these barges?

A. The position of M-271 is that we will load the barges until the National Labor Relations Board provides otherwise.

Q. How long has this been the official position of the Union?      A. Since July 2, 1948.

Q. Now is I.W.A. Local M-271 a labor organization?      A. Yes.

Q. Do its members participate in its affairs?

A. Yes.

Q. Does it bargain collectively for the employees of the employers?      A. Yes.

Q. Now, in these various meetings which you have had with Mr. Albright, well, did he at any time ever tell you who [365] he was or what his official position was?

A. He told us that he was the International representative of the I.L.W.U. in Alaska.

Q. And meaning that he represented what; that is, you say the International; what did he say, some local?

Mr. Andersen: I object to that as calling for a conclusion and opinion of the witness.

The Court: If he knows what he claimed.

Q. He claimed that he was a representative of the International or the Local?

A. International Union.

(Testimony of William H. Flint.)

Q. Where did he claim his area or his jurisdiction was?

Mr. Andersen: This word "claim" calls for a conclusion and opinion of the witness.

The Court: The what?

Mr. Andersen: He used the word "claim," what he claimed. It is not a question of evidence, it is a question of conclusion.

Q. What did he say?

The Court: As I have said before, it is difficult to avoid an element of conclusion and opinion in a lot of questions. The Court can't rule them all out. Objection overruled.

A. What was the question?

Q. What did he say his area of jurisdiction was; that is, of [366] what area does he have jurisdiction? A. All over Alaska.

Q. Did he at any time in your presence state that he represented Local 16?

A. No; he said that he was here to advise Local 16 in their matters.

Mr. Andersen: I move that be stricken as not responsive to the question, may it please the Court.

The Court: Motion denied.

Q. Now, Mr. Flint, at this meeting on May 8, 1948, you testified that there were a large number of I.W.A. members there and a large number of the I.L.W.U. and Mr. Albright did the talking. Mr. Burtz had just arrived and you were present. Did Mr. Albright say anything in the nature of a

(Testimony of William H. Flint.)

request that the I.W.A. recognize this picket line or refuse to go through it?

Mr. Andersen: I object to that as leading and suggestive, may it please the Court.

The Court: Objection overruled.

A. Are you speaking now of the afternoon meeting of May 8 or the evening meeting of May 8?

Q. The evening meeting of May 8, the meeting at which a large number were present, the full meeting.

A. The large meeting of the I.W.A.?

Q. Yes. [367]

A. And only Mr. Albright as far as the International or Local 16.

Q. Mr. Burtz and Mr. Albright were present?

A. Yes.

Q. And Local 16 was not present?

A. That is right.

Q. What did Mr. Albright say on that subject?

A. I asked Mr. Albright if he wanted to give our Local a word of advice in this dispute or a speech. He explained the whole dispute to them as he saw it and in that week, when our members were just about ready to go back to work—some were ready to go back by themselves without Union approval——

Mr. Andersen: That is not the question. The question is what was said.

Q. What did Mr. Albright say?

A. He told all the members going back to work through the picket line was a bad idea because a

(Testimony of William H. Flint.)

Union man just didn't go through a picket line and if he did, ordinarily he wouldn't get work anywhere else, blackballs, more or less, by the Unions, and if they did work in the mill it would only be for a certain length of time because the lumber shipped from here would not be unloaded down below.

Mr. Banfield: That is all. [368]

### Cross-Examination

By Mr. Andersen:

Q. Are you employed at the present time?

A. Yes, I am.

Q. By whom?

A. I am employed by the Juneau Spruce Corporation.

Q. What sort of work do you do there?

A. When the mill is operating I work as a band saw filer.

Q. My question is what do you do there?

A. That is what I do there when the mill is running.

Q. My question is what do you do there?

A. Right now I am an electrician's helper.

Q. Electrician's helper? A. That is right.

Q. What does your work consist of there now?

A. If they put in a motor I run a line over to the motor and make sure it runs right.

Q. Have you been working there as electrician's helper since October 11? A. No.

Q. You say the mill closed on October 11?

A. That is right.



(Testimony of William H. Flint.)

Q. During the time the mill operated, what did you do?      A. I was a band saw filer.

Q. After the mill closed what was the next work that you did? [369]

A. We worked around the yard on moving lumber around and we built certain presses and put roofs on buildings.

Q. And how long did that take?

A. That took until about the first part of November, I would say.

Q. Then what did you do?

A. Then I was a millwright's helper.

Q. What did you do then, what kind of work is that?

A. It is a job where they repair the mill, the actual part which operates, and get it in shape to operate.

Q. How long did you do that work?

A. Until about the end of December.

Q. Then what did you do?

A. Then I became the—I worked with the electricians from then on.

Q. Electrician's helper?      A. Yes.

Q. How many electricians are there?

A. One.

Q. You are his helper?      A. Yes.

Q. Has your rate of pay been the same during all this time?      A. That is right.

Q. What is your rate of pay?

A. \$1.70 per hour. [370]

(Testimony of William H. Flint.)

Q. What is the normal rate of pay for electrician's helper, if you know?

A. If you consider——

Q. Do you know the rate of pay for an electrician's helper?

A. Yes. It is not the same, though.

Q. What is it, less or more?

Mr. Banfield: If the Court please, I would like counsel to be more specific, state where the rate of pay is different.

Q. At the mill?

A. No; that is the rate of pay at that mill.

Q. \$1.70? A. \$1.70.

Q. What was the rate of pay of a band saw filer?

A. \$1.70.

Q. And that is \$1.70 too? A. Right.

Q. Do you know what the rate of pay for a band saw filer was generally in 1948?

A. Yes.

Q. What was it? A. \$1.70.

Q. And you are now being paid what?

A. \$1.70.

Q. Just what does an electrician do there when the mill isn't [371] working?

A. That is when he does all of his—all of the new construction work.

Q. Are you presently engaged in new construction work there? A. That is right.

Q. And for how long?

A. Since about the first of November, I imagine.

(Testimony of William H. Flint.)

Q. What is the construction work that is being done there?

A. We remodeled the whole saw mill as to how lumber flows through the mill.

Q. There was something the matter with the plant and it had to be remodeled?

A. Absolutely.

Q. What was the matter with it so that it had to be remodeled?

A. The lumber would get so far in the mill and it would start piling up and cause a bottleneck.

Q. It was so constructed they couldn't get enough lumber through it?

A. I don't know what you mean by "enough lumber."

Q. Not as much as they wanted, put it that way.

A. That is right; not as much as they wanted.

Q. In order to have a proper operation they had to close the mill this length of time in order to make all the changes you mentioned?

A. They wouldn't have had to; no. [372]

Q. What do you mean "they wouldn't have had to"?

A. For the simple reason they could make money with it like it was.

Q. But of course not as efficiently, is that what you mean to say?      A. Not as efficiently.

Q. And they couldn't put out as much lumber; is that correct?      A. That is right.

Q. And they decided to make all these changes

(Testimony of William H. Flint.)

so they could operate on an efficient basis; is that your understanding?

A. As long as the mill was shut they might as well make the changes.

Q. So it would work efficiently; is that true?

A. That is true.

Q. Who did you talk to about that?

A. All the bosses.

Q. Who, for instance?

A. There was a Mr. Harris, who is master mechanic, Mr. Shellenbarger, who is yard superintendent, and Mr. Johnson, sawmill superintendent.

Q. Did you talk to Mr. Johnson?

A. And Mr. Schultz, our Manager.

Q. Did you talk to Mr. Hawkins about it?

A. No; he isn't here.

Q. Did they tear out a lot of things Hawkins put in that [373] caused bottlenecks?

A. That is right.

Q. Mr. Hawkins had put in systems and things that caused bottlenecks which had to be ripped out in order to replace them according to Mr. Schultz's ideas so the mill could be operated efficiently; isn't that right?

A. Will you repeat that again, please?

Q. Will you read the question, Miss Reporter?

Court Reporter: "Mr. Hawkins had put in systems and things that caused bottlenecks which had to be ripped out in order to replace them according to Mr. Schultz's ideas so the mill could be operated efficiently; isn't that right?"

(Testimony of William H. Flint.)

Mr. Banfield: If the Court please, I object to this on three grounds. In the first place, no foundation has been laid that it is going to be material. It is another excursion such as he has made with all the witnesses that ends no place. In the second place, this man is not testifying as an expert on mill design or what creates bottlenecks, or how to run a sawmill, and there is no materiality apparent in this testimony. It is wholly incompetent, irrelevant and immaterial and not proper cross-examination. We did not ask that question of the witness or any questions about the efficiency of the plant or what is being done there now.

Mr. Andersen: May I make a speech too before the [374] Court rules?

The Court: I don't want any speeches made. If you have anything to say you can say it.

Mr. Andersen: I will be very happy to, your Honor. First, I want to find out what type of work this young man is doing there. Secondly, it goes to the interest of this particular witness, and third, finding out what he is doing there. He incidentally, uncovered it. I had no idea this was true, that the mill can't operate efficiently. Whether or not the mill operates efficiently is very important to this case. They testified they were going to put something like one million feet of lumber through and apparently, according to this man, they couldn't do it with the machinery installed by Mr. Hawkins, in order to do it efficiently.



(Testimony of William H. Flint.)

The Court: Objection sustained.

Q. With respect to this electrical helper——

A. Your Honor, counsel stated——

Mr. Andersen: Would your Honor tell the witness he is only to speak——

The Court: You can explain.

A. I would like to straighten out the record.

The Court: You want to explain some answer?

A. Counsel stated that I testified—I want to know if I am right or not—that I said that the mill couldn't run because Mr. Hawkins put in bottlenecks. Is that in the record? [375]

Mr. Andersen: He has no interest in the record. I think he shows he is an interested witness.

The Court: If you have any correction to make of your answer you may make it now. If you have in mind any answers you have made that you wish to correct you can correct it, or if you wish to explain any answer you may explain it, but that is as far as you can go.

A. I would say it was my assumption that Mr. Hawkins had put in bottlenecks.

Mr. Andersen: The witness has already answered the question. This is sort of a hind-sight or second thought. That is all.

Mr. Strayer: May the witness complete his explanation?

The Court: He made his explanation.

Mr. Andersen: I think he did.

Q. As part of your work as electrician's helper did you disconnect any equipment in there?

(Testimony of William H. Flint.)

A. Yes.

Q. Have you installed additional equipment?

A. Yes.

Q. And you say there is just one electrician and yourself working on the electrical work there?

A. I am the only one under the regular electrician.

Q. The two of you? [376]

A. Two of us; that is right.

Q. Do you work six days a week, five or four?

A. Six.

Q. And eight to five, or four, I assume?

A. To half past four.

Q. Whatever the hours are—by the way, are you still President of this Union? A. Yes.

Q. How many members are there in this Union at the present time?

A. Oh, we should have sixty men, although I can't say they are all members, having worked in the mill quite a few months, less than that in paying dues, but they do hold cards.

Q. Did you talk to anybody before coming to court about this case? A. No.

Q. You never talked to anybody about this case?

A. My wife.

Q. Haven't you talked to anybody about the case?

A. I have talked to several men about this case, but not material to this.

Q. You haven't discussed that with anybody?

(Testimony of William H. Flint.)

A. That is right; I have.

Mr. Andersen: Counsel came to the rescue.

Mr. Banfield: Counsel knows that no case is ever tried without talking to witnesses.

Mr. Andersen: He said twice he didn't talk.

Q. Haven't you talked in detail with these two gentlemen? A. Right.

Q. And talked with them for hours?

A. Not for hours.

Q. How long?

A. Maybe twice, a matter of a few minutes at a time.

Q. A few minutes each occasion? A. Yes.

Q. When was the first time?

A. The first time was perhaps a week ago maybe.

Q. When was the second occasion?

A. Yesterday.

Q. Before court?

A. Yesterday evening.

Q. So, of course, you did talk to them?

A. That is right.

Q. You said the first time that you didn't talk to anybody. A. You inferred——

Q. I didn't infer anything, Mr. Witness. I am just asking questions.

Mr. Strayer: I think the witness has a right to answer. [378]

The Court: The witness should be entitled to answer. If you wish to answer, you may do so.

Mr. Andersen: Of course.

(Testimony of William H. Flint.)

A. You inferred I talked directly before I came up here.

Q. I don't think I inferred anything. Is that your answer?      A. That is my answer.

Q. Is that your full and complete answer?

A. Yes, as far as—I mean——

Q. I asked you if you discussed this case with anyone and you said "No." You know what the word "anyone" means, don't you?

A. That is right.

Q. That answer was wrong, wasn't it?

A. That is right.

Q. Yes; of course. By the way, you mentioned trips you took Outside; you took a trip to Portland?

A. That is right.

Q. How many trips to Portland?

A. Twice.

Q. When were they?

A. One in the latter part of May and one in October.

Q. Who paid for that trip, you personally?

A. On the May 1 trip?

Q. You said there was one in May?

A. By this Company, the Juneau Spruce. [379]

Q. Juneau Spruce?      A. That is right.

Q. And you went down to Portland; how long were you there? I assume you went on business for the Juneau Spruce Corporation, as an electrician's helper?      A. No.

Q. Who paid your expenses?

(Testimony of William H. Flint.)

A. The Juneau Spruce.

Q. You went on business for them?

A. No.

Q. Did Juneau Spruce pay your expenses?

A. Yes.

Q. Did they pay your wages while you were gone? A. No. I wasn't working then.

Q. In May? A. Right.

Q. Did you make a second trip? A. Yes.

Q. On business for the Company? A. No.

Q. It wasn't on business for the Company?

A. No.

Q. Who paid your expenses that time?

A. Our Union.

Q. Did the Company pay your wages while you were away? [380] A. No.

Q. You made a trip down there in July, didn't you? A. No.

Q. Were you in Portland on July 3?

A. No.

Q. Or were you in Portland on July 3 of 1948?

A. No.

Q. On July 3 did you on behalf of your Union sign any sort of a contract? A. Yes.

Q. Where did you sign it?

A. At the Juneau Spruce sawmill.

Q. In Juneau, Alaska?

A. In Juneau Alaska.

Q. And is that what is called a "Back to Work" Agreement? A. That is right.



(Testimony of William H. Flint.)

Q. Was that signed before or after your—that was signed after your first or second trip to Portland? A. The first trip.

Q. And was it before your second trip?

A. Yes.

Q. What was the date of this second trip to Portland?

A. October the ninth; I'm quite sure.

Q. October 9 of 1948? A. That is right.

Q. And you say on that trip your Union paid the expenses? A. That is right.

Q. Do you recall signing a "Back to Work" Agreement with the Juneau Spruce Corporation?

A. Yes.

Q. Do you recall what it said?

A. Quite a bit of it.

Q. Let me withdraw that for a moment. On October of 1948; or rather July 3, is that about the date you signed such an agreement?

A. As far as I recall it is the date.

Q. Have you a copy of it?

A. I have the copy in the Local files.

Q. Have you seen it lately?

A. I believe I have, within the last month.

Q. Have you read it? A. Yes.

Q. Did you turn it over to counsel?

A. No; I believe counsel could have got one from the Juneau Spruce Corporation.

Q. Why do you say you "believe" that?

A. Naturally if I got one, the Company also got one.

(Testimony of William H. Flint.)

Q. You say you "believe" counsel got it from Juneau Spruce Company?

A. I said if they wanted they could have got it from the [382] Juneau Spruce Corporation.

Q. You didn't supply them one then?

A. No.

Q. The contract memorandum of July 3, 1948, entered into followed the agreement of November 3, isn't that true?      A. True.

Q. I assume you didn't have anything to do about the negotiations of November 3, as you weren't an official of the Local then?

A. No.

Q. And you were sort of fresh into the Union, is that right?      A. Right.

Q. Some question came up about a question of the agreement of November 3, about if it referred to barge loading?

A. That would be hearsay.

Q. Would it be—let your lawyers—

The Court: You should answer the question regardless of whether counsel—

Mr. Strayer: I am not clear from the question if it was when the contract was negotiated or if it came up later on. I think counsel should make that clear.

Q. After the agreement of November 3, 1947—by the way, have you read the agreement of November 3, 1947?      A. What was that again?

Q. Have you ever read the agreement of November 3, 1947? [383]      A. Several times.

(Testimony of William H. Flint.)

Q. You are familiar with it then, aren't you?

A. Yes.

Q. Sometime between November 3, 1947, and July 3, 1948—of course the strike had occurred or lock out—or——

A. You say——

Q. Whatever you want to call it, sometime between November 3, 1947, and July 3, 1948; isn't that true?

A. Yes.

Q. Somewhere during that period and sometime prior to July 3 the question was raised as to whether the agreement of November 3 had anything to do with barge loading; isn't that true?

A. That is right.

Q. Your Union wasn't certain whether the contract applied to barge loading or not, was it?

A. That is right.

Q. On or about July 3 you had a meeting with the Company—by the way, with whom did you discuss it in July, with the Company, what man in the Company did you discuss it with?

A. Mr. Schultz.

Q. He is the President of the Company?

A. No; he is Manager of this local sawmill.

Q. He is in court now?

A. That is right.

Q. You wanted to straighten out what the contract referred to regarding barge loading because the Union was under the impression it didn't include barge loading; isn't that true?

A. I wouldn't say "under the impression."

Q. That idea; put it that way.

(Testimony of William H. Flint.)

A. Up until July 3 they weren't sure.

Q. Not certain, and the Union's position was that the contract of the third really didn't cover barge loading, so everybody wanted to have an understanding; is that correct?      A. No.

Q. Let's put it this way: You said "No" Let's put it this way; of course if the contract had been clear on the question there wouldn't have been any necessity for a discussion of that problem with the Company, would there?

A. It was clear in our minds.

Q. It was clear in your minds but it wasn't clear in the Company's mind?

A. Not in a third party's mind.

Q. Who was that, Local 16?

A. That is right.

Q. Then you did discuss your contract then with Local 16?      A. Many times.

Q. With whom did you discuss it?

A. They always had different men. Groups came to see all of [385] us. I imagine during the course of time all the members came in.

Q. Was there any one occasion when you discussed it?

A. On the eighth day of May when we had a meeting, Burtz and Albright and Local 16.

Q. Did you discuss the terms of Exhibit 2 at that time with Mr. Albright?

A. Our contract? Exhibit 2?

Q. Yes.

(Testimony of William H. Flint.)

A. Yes; we discussed the terms of the contract, too.

Q. You discussed the terms of the contract. Was there any discussion about the language of the contract in so far as it may have related to barge loading? A. Yes.

Q. That, of course, was before July 3, wasn't it?

A. It was.

Q. This agreement of July 3 is what is usually called a "Back to Work" Agreement, isn't it?

A. That is right.

Q. In which you agreed to go through the picket lines; isn't that true? A. That is right.

Q. You say there was some question in a third party's mind. Did you ever show that before it, the July 3 agreement, was signed, to any of the Local 16 men? [386] A. No, I didn't.

Q. Because you considered it none of their business? A. That is right.

Q. This contract was made solely between you and the Company; that is, your Union and the Company, isn't that true? A. That is right.

Q. You stated it was none of the Union's business? A. That is right.

Q. In that agreement of about July 3, was there any wording in that general agreement to the general effect that your Union claimed the jurisdiction of all work performed by all the employees of the Juneau Spruce Corporation, according to the contract, and also the loading of barges?



(Testimony of William H. Flint.)

Mr. Strayer: Your Honor, may the witness see the contract?

The Court: Yes.

Mr. Andersen: I am just asking the question, if that is in it.

The Court: Before the witness can be questioned about a writing, the rule here is that the writing has to be shown to him.

Mr. Andersen: At this point it is not necessary. I am just asking him his recollection of what the document contained.

The Court: I thought you were reading from it.

Mr. Andersen: Maybe I am, your Honor. I have the document right in front of me. I don't believe at this point I have to do it.

The Court: The local statute requires that before a witness shall be questioned regarding the contents of something in writing, that the writing has to be shown to him.

Mr. Andersen: Does your Honor want me to follow that procedure?

The Court: Yes.

Mr. Andersen: I will be glad to comply. You have seen this, counsel?

Mr. Strayer: Yes.

Mr. Banfield: I would like to have that last question read back, please, to see exactly what it was.

Q. Does this document refresh your memory?

A. Yes.

(Testimony of William H. Flint.)

Mr. Banfield: I would like to have the question read back, the previous question.

Court Reporter: "In that agreement of about July 3, was there any wording in that general agreement to the general effect that your Union claimed the jurisdiction of all work performed by all the employees of the Juneau Spruce Corporation, according to the contract, and also the loading of barges?"

Q. Was there? [398]           A. Yes.

Q. In other words, this was sort of intended as a supplement to your agreement of November 3 to clear up who would handle the barges; is that the general idea?           A. No.

Q. By the way, who drew this? Did you or somebody else draw it?           A. I drew it.

Q. Is this your language?

A. That is my own language.

Q. Where did you draw the original?

A. At my home.

Q. By the way, I believe this should be marked for identification.

The Court: It may be so marked, Defendant's Exhibit B. (For identification.)

Q. You are sure this Exhibit B that I have here wasn't drawn in Portland?

A. Absolutely not.

Mr. Strayer: I think if counsel is going to continue to question from it, I think it should be put in evidence and read to the jury. I request that at this time.

(Testimony of William H. Flint.)

The Court: I suppose you intend to offer it, but by some other witness, but if you have no——

Mr. Andersen: I will offer it at the appropriate time. [389]

Mr. Strayer: Then we offer it at this time as Plaintiff's Exhibit.

Mr. Andersen: It was offered for identification. There is no objection to counsel offering it, I guess.

The Court: It will be admitted then.

Mr. Strayer: Will you read it, Mr. Andersen, or shall we?

Mr. Andersen: We will take care of things.

Mr. Strayer: I will ask the Court for the privilege of reading the exhibit at this time.

Mr. Andersen: May I ask the privilege of continuing my own examination?

The Court: I think it can be deferred until re-direct examination.

Clerk of the Court: The exhibit has been marked Plaintiff's Exhibit No. 7.

Q. Now, I understand you testified that before the strike or lock out, whichever term may be used, at least before April 10 of 1948, that there were meetings of Local 271, your Union, where the question of barge loading, the jurisdiction of longshoremen and your jurisdiction was discussed; is that true? A. That is right.

Q. And on or about April 1, your Union prepared a resolution [390] of some kind or a motion regarding this question?

(Testimony of William H. Flint.)

A. A motion; that is right.

Q. And you were there at that meeting, weren't you?

A. That is right.

Q. Was that motion to the general effect that the work belonged to the longshoremen?

A. No.

Q. It wasn't?

A. No.

Q. Nothing like that was said?

A. Something like that was said.

Q. Was that the sense of the motion, that the work belonged to the longshoremen?

A. It was in respect to their jurisdiction.

Q. In other words, you didn't say the work belonged to the longshoremen?

A. No.

Q. Is this in your handwriting?

A. Yes.

Q. I will offer it.

Mr. Strayer: It has not been identified.

Mr. Andersen: It was marked for identification. We will take care of details.

The Court: As to this particular exhibit, it was undisputed that it was a memorandum or minutes of what occurred [391] at this meeting.

Mr. Strayer: It was not made by this witness, and the previous witness said he was not at the meeting, and counsel asked if he was testifying from hearsay, and he said "Yes."

Mr. Andersen: This witness testified it was in his handwriting.

Mr. Strayer: He doesn't testify that it was made at the meeting and I challenge counsel to have him do so.

(Testimony of William H. Flint.)

Mr. Andersen: I don't see what good it could do him to challenge a lawyer in the courtroom.

Q. This document you say is in your handwriting?  
A. My handwriting.

Q. That is the whole page? Not what appears to be marks of the Court.

A. Yes; the whole page.

Q. And when did you write these?

A. I copied those from the minute books of our Local Union on about—sometime in the month of May, 1948.

Q. And this, in other words as I understand it, is in your minute book, your Union's minute book?

A. The man who takes care of the minutes, the officer elected to take care of them, the Secretary of the Union.

Q. You didn't take care of that in April of 1948?  
A. No. [392]

Q. But when you wanted to find out what the motion on the floor in discussion was, you went to the minute book; you wanted to see as to what occurred in the Union meeting April 1?

A. I was asked to copy the minutes from our book, which I did.

Q. Who asked you?

A. Our lawyer at that time.

Q. Your lawyer asked you to get a copy of those minutes?  
A. Yes.

Mr. Andersen: May I read this to the jury? I will offer it in evidence at this time.



(Testimony of William H. Flint.)

Mr. Banfield: I object. It has not been identified to show who made it and how it came to be in the minute book and whether it reflects what happened. Anybody could put that in the minute book. There is no signature; no nothing.

Q. As I understand you, you got this from the minute book? A. Yes.

Q. They are excerpts that were requested by Mr. Banfield, is that correct?

A. No; he wasn't our lawyer.

Q. You mentioned "our lawyer."

A. Our lawyer—he is not our lawyer. He is the Company's lawyer.

Q. You personally as President of the Union copied it out of the official minute book of the Union; is that correct? [393] A. Correct.

Q. And whomsoever your lawyer was, you gave it to him as a true excerpt from the minute book of the Union; right? A. Correct.

Q. Did you say—of course, you copied it—you would say it is a true copy? A. It is.

Mr. Andersen: I think probably, your Honor, the only objection available would be that it is not the best evidence. This is a certified copy.

Mr. Strayer: We don't make that objection.

Mr. Andersen: Then I will offer it.

Mr. Strayer: The objection we make is that there is no evidence that it correctly reflects what happened at the meeting.

The Court: The objection was made before and

(Testimony of William H. Flint.)

will have to be sustained on that ground, unless this witness can testify that the record was made under his supervision and he knows that it was correctly made and recognizes the signature of the person.

Q. If I understand your testimony, you have a man in the Union that is an officer in the Union whose duty it is to take minutes?

A. That is right.

Q. His duty in taking minutes is to correctly take motions [394] and actions on motions taken at the Union meetings; is that correct?

A. Correct.

Q. And he is supposed to note this down into the book for that purpose?      A. Correct.

Q. You know his handwriting, don't you?

A. No; I wouldn't say I know his handwriting now.

Q. At the time you made this excerpt?

A. I was quite sure it was his. It was in the minute book, and he had the minute book.

Q. Where did you get the minute book, from him?

A. Our books are all kept in a locker at the Hall.

Q. When you went to get the minute book you recognized it as the official minute book of the Union?      A. Yes.

Q. Did this person happen to be there?

A. No.

Q. But you recognized it and his writing?

A. That is right.

(Testimony of William H. Flint.)

Q. And then you copied it?

A. That is right.

Q. And that minute book is under the control of the Union—your control as President, his control as Secretary?

A. Not when those were written it was not under my control. [395] At the time I got them they were under my control.

Mr. Andersen: I think we have laid a sufficient foundation.

The Court: He hasn't testified the record was correct at the time he made the copy.

Mr. Andersen: I think it is the record of an organization. I don't believe—we don't have to go into that question at this particular point.

The Court: When would it be gone into?

Mr. Andersen: On my further examination. This is apparently an official record of the Union.

The Court: You want it merely marked for identification?

Mr. Andersen: I want to offer it in evidence, may it please the Court. It has already been marked as Defendant's Exhibit A for identification. I would like to offer it as Defendant's Exhibit A in evidence, may it please the Court.

The Court: It has got to be shown by this witness or somebody else that the record of which that purports to be a copy was made by somebody whose duty it was to make it in the course of the organization.

(Testimony of William H. Flint.)

Mr. Andersen: He has testified to that.

The Court: He hasn't testified that he knew it was correct at the time it was made. That is the objection.

Mr. Andersen: You mean when he copied it, he copied [396] it correctly?

The Court: He would have to know that the original record from which he was making a copy was a correct copy.

Mr. Andersen: If that would be true, then any time that the man who wrote the minutes of a lodge died, the minutes themselves being the official record, would never be admissible in any court; the person having been deceased couldn't testify.

The Court: Before records are admissible, it has to be shown that they were made by the person who made them in the regular course of business and that it was his regular course of business to make them or that they were made under his supervision by someone under him and that he knows the record is correct. If that were not made under those circumstances then he would have to be able to testify that the record is not only correct, but that he recognizes the handwriting of the person who made it.

Mr. Andersen: I think it is admissible, but the witness can say whether it is correct or not after it is in evidence. May it please the Court, I think that goes to the weight of the document rather than—

The Court: Not so much what it relates is cor-

(Testimony of William H. Flint.)

rect, but whether the person who made the record made a correct record, and whether he knows it is a correct record.

Mr. Andersen: I will see if I can develop that, your [397] Honor.

Q. I assume the Secretary of your Local is instructed to take down correct records, isn't that true? A. He is instructed to do that.

Q. He does, doesn't he; so far as you know?

A. No.

Q. Oh, he doesn't? Then I direct your attention to that document and you say that is entirely incorrect, don't you?

A. No, I don't say that it is entirely incorrect.

Q. Is it correct?

A. No, it is not, sir. Parts of it are correct.

Q. Let me have it then. At the top it says, "Special Meeting, April 1, 19—" I think that is 1948. Then it says, "Discussion between Labor Committee of I.L.W.U. and those attending meeting relative to loading of barges and ships." Is that correct? Was it on April 1? A. Yes.

Q. It was in 1948? A. Yes.

Q. It was a special meeting?

A. That I could not swear to. I imagine it was.

Mr. Strayer: I make the objection that obviously counsel cannot do by indirection what he cannot do by direction. [398]

The Court: Objection sustained.

Q. Let's refer to the second meeting there of April 9, 1948, that has been mentioned. Is that a



(Testimony of William H. Flint.)

correct excerpt from the minutes, or incorrect?

A. That is the minutes of April 9?

Mr. Paul: Just a moment please.

Mr. Strayer: Just a second.

A. These minutes of April 9 are not minutes of a Local M-271 meeting.

Q. They are not? Are they in your handwriting?  
A. They are in our book and I copied them.

Q. Is this document also in your handwriting?

A. Yes.

Q. When you state it isn't true, do I understand that it is correct as far as it goes but that there is additional matter that should be there?

A. Not exactly that. I said the motion on April 1 ought to be reworded correctly and that the meeting of April 9 was not a meeting of our Local.

Q. What local does this special meeting of April 9 refer to?

A. That is all the employees of the Juneau Spruce Corporation.

Q. All of the employees?

A. That is right.

Q. April 1 is of the Local?

A. That is right. [399]

Q. And the one of the special meeting of the ninth was a meeting of all the employees, is that correct?  
A. That is right.

Q. With respect to this motion of April 9, April

(Testimony of William H. Flint.)

1, rather, was a "motion made and seconded to go on record to not load barges. We figure this work"——

Mr. Strayer: Just a moment. Your Honor, counsel is again now doing by indirection what he was refused permission to do. I don't want to be captious and Mr. Banfield doesn't either; if counsel insists, we can withdraw the objection and he can read it in evidence.

The Court: Who has the custody?

Mr. Andersen: They are not making the best evidence objection. They waived that objection. That is why I think it is clearly admissible.

The Court: But I have to pass on any objection that may occur to me on passing on the admissibility of something. I am wondering, if the person who is custodian of the original record——

Mr. Andersen: They have waived that.

Mr. Banfield: We will stipulate that it may be put in the record.

Mr. Andersen: That is fine.

Mr. Banfield: That is fine; sure.

The Court: I thought the objection you made a moment [400] ago, when I was about to admit it, was that it wasn't correct. If you want to waive that objection, why the Court has no objection.

Mr. Banfield: We have the privilege of cross-examining to show whether or not it is correct.

Mr. Andersen: That is why trials take so long. May I read this?

(Testimony of William H. Flint.)

The Court: Yes.

Mr. Andersen: "Special Meeting, April 1, 1948. Discussion between Labor Committee of I.L.W.U. and those attending meeting, relative to loading of barges and ships. Motion made and seconded to go on record to not load barges. We figure this work belongs to the longshoremen. By a written vote—thirteen members present—unanimous."

Q. I understand that was a regular meeting, rather a special meeting, of Local 271?

A. Right.

Q. And then the following week, April 9, you held a meeting also, didn't you? A. April 9.

Mr. Strayer: Pardon me, Mr. Andersen. May I have that exhibit number?

Mr. Andersen: It is Exhibit A.

Clerk of the Court: Yes, sir. The exhibit has been so marked. [401]

Q. On April 9 you held another special meeting? A. Well, the Local didn't; no.

Q. You used the minute book of the Local to record the minutes? A. I didn't.

Q. An official of your Local did?

A. He did at that time; yes.

Q. You threw the meeting open to all employees of the Juneau Spruce, is that correct? A. No.

Q. Where was it held? A. At the C.I.O.

Q. You usually hold your meetings there?

A. That is right.

Q. And the minute book is kept there?

(Testimony of William H. Flint.)

A. That is right.

Q. What percentage of the people at the meeting were sawmill workers and eligible for membership?

A. I think—and hope—all of them were.

Q. And you hope so?           A. Yes.

Q. The question up for discussion—I will read the exhibit. “Special Meeting, April 9, 1948. Discussion on conditions relative to I.L.W.U. loading barges. Move made and seconded to take vote on whether to cross picket line—again [402] a unanimous vote to honor picket line of I.L.W.U.” About how many were present at that meeting?

A. I would say 180 in the Hall. Who they were I don’t know.

Q. You said they were all eligible for membership in your Union?

A. They would have been eligible if they wanted to join.

Q. And you only let sawmill workers join your Union, don’t you           A. That is right.

Q. Did you have meetings after that and until July 3?           A. You mean of our Local?

Q. Yes.           A. Yes.

Q. And with respect to Exhibit 7 for the Plaintiff, which is dated July 3, you signed that in Juneau as you stated, but where?

A. At the Juneau Spruce Corporation office.

Q. Were you alone at the time?           A. No.

Q. Who attended you there?

(Testimony of William H. Flint.)

A. All the rest of the members. The names are on that piece of paper; if it is a true document, they are.

Q. You mean——

A. Five members, Rufus Chaney, Paul R. Beierly——

Q. Who was Rufus Chaney? [403]

A. A man who worked for our sawmill, a member of our Union.

Q. Who is George Converse?

A. He also works for the sawmill.

Q. Who is Paul R. Beierly?

A. He works for the sawmill.

Q. Who is Edward Hughes?

A. Vice President of the Local.

Q. They all were there with you, is that correct, and Mr. Schultz signed on behalf of the Company? A. That is right.

Q. I assume the Union had a discussion of this just before this, is that correct?

A. It was discussed at a meeting before, the night before at a meeting.

Q. The night before that, and you wanted to clarify it; that is why it was drawn up and brought down? A. That is right.

Q. When this Exhibit 7, Plaintiff's Exhibit 7, was drawn, of course there was a discussion in relation to your contract, that is the contract of November 3? A. I don't understand your question.

Q. When you drew this document which is Plain-



(Testimony of William H. Flint.)

tiff's Exhibit No. 7, I assume there was some discussion about the document in relation to Plaintiff's Exhibit 2, which is your Collective Bargaining Agreement? [404]

A. That is right.

Q. You wanted to clarify things, too, didn't you?

A. Clarify?

Q. Between you and the Company.

A. I wanted it clarified; that is right.

Mr. Andersen: Now, may I read this, your Honor?

The Court: It is an exhibit, isn't it?

Mr. Andersen: Yes.

The Court: Yes.

Mr. Andersen: Thank you. "July 3, 1948. Local M-271 International Woodworkers of America, C.I.O., agrees to cross the picket line established by Local 16, I.L.W.U. and claim jurisdiction of all work performed by employees of the Juneau Spruce Corporation according to our contract, also the loading of company owned or leased barges with company owned gear as stated in the Corporation's letter signed by E. H. Card and addressed to Virgil Burtz. The Juneau Spruce Corporation will hire all members of Local M-271 formerly employed by the company at the time the picket line was established according to seniority needed for the efficient operation of the plant on a single shift basis. The Juneau Spruce Corporation further agrees to file no charges against any member of Local M-271 or against the union as an organization, or to dis-

(Testimony of William H. Flint.)

criminate against any member for refusing to cross the picket line. The company agrees to open negotiations on [405] "a wage scale for all job classifications including barge loading comparable to rates in the states plus 10c per hour for Alaska retroactive to April 1, 1948."

Q. And it was sometime after that agreement was signed that you all returned to work; is that correct? A. That is correct.

Q. On this meeting of April 1 that you talked about I understand that a Committee of Local 16 came and talked to you, or was it before the meeting?

A. You are referring to the meeting of April 1?

Q. Yes. A. That is right.

Q. And for the purpose of this cross-examination the names Guy, Wheat and Burgo came there and talked? A. Yes.

Q. Talked with you, or all of you, or just a Committee of you?

A. With all of us at the meeting.

Q. Before the meeting?

A. Before the meeting.

Q. And how long were they there about?

A. I will say about a half an hour.

Q. And I guess you knew these fellows, didn't you, or were they strangers?

A. I knew some of them.

Q. I assume they told you in effect, as a matter of fact, [406] showed you, pay stubs for work they had done for Juneau Spruce?

(Testimony of William H. Flint.)

A. Pay stubs; that is right.

Q. They told your Union they had been doing this work for many years at the Juneau Lumber before the Juneau Spruce took over; isn't that correct?

A. That is right.

Q. They told you, as you said before, that they had a contract with the Juneau Lumber?

A. Yes.

Q. They told you that?

A. That is right.

Q. And that it was their opinion that that contract carried over; isn't that true?

A. Right.

Q. And that the contract carried over and hired longshoremen in the same way it always hired longshoremen; that is true, too, is it?

A. That is right.

Q. By virtue of those circumstances, they didn't want to see any claims for work come in conflict between your two Unions, and wanted to work everything out nicely and decently and without any trouble, isn't that true?

A. Right.

Q. They came to give you all the facts. [407]

A. That is right.

Q. And after they gave you the facts they left?

A. That is right.

Q. And after they left your Union voted, in effect, that the work belonged to the longshoremen and you would respect them?

A. No.

Q. Did your Union vote?

A. Yes.

Q. Did your Union vote for the longshoremen to get that work?

(Testimony of William H. Flint.)

A. I can't answer "Yes" or "No."

Q. You can't answer "Yes" or "No"? Is it "cannot" or "don't want to"?

A. I want to.

Q. Suppose you answer "Yes" or "No" and as the Court stated, you have a perfect right to explain your answer, or is it impossible to answer the question?

A. I would like to state the motion, and then state yes or no.

Q. Suppose you answer the question first and then explain it.

A. If I am allowed afterward to explain——

Q. The Judge told you you could explain.

Mr. Banfield: First, would you read the question?

Mr. Andersen: Yes. Would you read the question?

Court Reporter: "Did your Union vote for the longshoremen [408] to get that work?"

A. Yes.

Q. Your answer is "Yes"?

A. Yes.

Q. Now you may explain.

A. We voted that we would respect the jurisdiction of the longshore Union until we knew who it actually belonged to, or words to that effect.

Q. Or words to that effect?

A. I can't quote it exactly.

Q. Now, does your Union follow the usual prac-

(Testimony of William H. Flint.)

tice of having a man to read the previous minutes?

A. We usually do.

Q. At the meeting of April 9, the minutes of April 1 were read?

A. I can't recall. I was not President at that time.

Q. You weren't there?

A. I was there, but I was not President at that time.

Q. Is it usually the custom every time you have a meeting to read the minutes? A. Yes.

Q. So far as you know, it was that night?

A. I imagine—I couldn't swear to it.

Q. Then they asked for corrections, omissions or additions? A. That is right. [409]

Q. And so far as you know, none were made at the meeting of April 9, no suggested changes to the minutes of April 1 were made?

A. No, they weren't.

Q. The minutes stood as read? A. Yes.

Q. They stood as recorded—unchanged, uncorrected, uncriticized—is that correct?

A. On the meeting of April 9?

Q. Let me put it again. On the meeting of April 9, following your usual procedure, the minutes of April 1 were read and no corrections were offered or made?

A. On that question, seeing it was not a meeting of our Local, I doubt very much if they were read. They may have been.



(Testimony of William H. Flint.)

Q. It was usually the practice?

A. It was usually the practice, if it was a meeting of the Local.

Q. When you went down to copy the minutes, as you have indicated, did you observe whether any changes had been made?

A. I copied them as they were.

Q. And didn't make any changes?

A. No.

Q. And didn't see any changes? A. No.

Q. When you took this vote, as you put it—I assume after the [410] longshoremen came up there and told you how they felt about this thing, that you fellows who were in there talked about it, and talked about it, I understand, for quite some time, about an hour, as I recall your testimony, before the vote? A. Before the vote; that is right.

Q. An hour or longer?

A. I would say about a half hour or an hour. I am not sure which.

Q. Did everybody in your Local have an opportunity to express themselves?

A. The members that were there.

Q. Everybody has the right to attend the meeting, all the members? A. Yes.

Q. So all the members expressed themselves after the longshoremen left? A. Yes.

Q. And then a vote was taken; is that true?

A. That is right.

Q. By the way, when the longshoremen from

(Testimony of William H. Flint.)

Local 16 met with you that evening, who was the spokesman—if you recall that they had a spokesman?

A. Yes. I couldn't remember it this morning. He was an old fellow in the gang and isn't here now. [411]

Q. You haven't seen him today?

A. No; not for months.

Q. In that conversation was there any reference to your own Constitution; that is, to the I.W.A.?

A. That is right.

Q. About the normal jurisdiction of the I.W.A.?

A. That is right.

Q. And they told you that loading boats and barges is usually and traditionally longshore work?

A. Right.

Q. And they wanted to do it and thought they had a right to; is that the substance of it?

A. Right.

Q. That is on April 1. They didn't say they were or were not going to put up a picket line?

A. Yes, they did.

Q. What did they say?

A. That they were going to the Company to see if they could get the work and if they couldn't they would put up a picket line so they could get the work.

Q. After this your Union, in effect, asked the Company to turn the work over to the longshoremen, didn't you?

(Testimony of William H. Flint.)

A. We sent a man with the Longshore Committee.

Q. Do you know the name of the man?

A. Gordon Peterson. [412]

Q. And was he officially representing your Union so far as you know?

A. As far as I know he was.

Q. Did he occupy any position in the Union?

A. Secretary.

Q. And did you attend the meeting with the Company? A. No.

Q. Well, before he went down there the Union had taken appropriate steps to advise the Company that so far as the I.W.A. was concerned, that is, Local 271, you fellows were perfectly pleased and contented to let the longshoremen do this work because it was traditionally longshore work anyway; isn't that true?

A. I couldn't swear to that, but I think a letter was written by the Secretary to the Company and advised them of the action of the meeting.

Q. What meeting are you referring to?

A. April 1

Q. April 1? A. April 1.

Q. You think a letter was written to the Company? A. I think so.

Q. As President of the Union did you see the letter?

A. I was not President at that time.

Q. In 1948? [413] A. That is right.

(Testimony of William H. Flint.)

Q. When did you become President?

A. I became President on the evening of the tenth of April about eight o'clock.

Q. That is after the second meeting then?

A. That is right.

Q. Were you—did you attend the meeting when that letter was authorized?

A. That I can't recall, if it was ever authorized or not. All I think is I think I have seen a copy in the file of a record like that, but I think there was.

Q. The general idea was that the Union passed a motion to advise the Company that M-271 wasn't interested in doing the work and they could turn it over to the longshoremen. Is that the sense of it, is that true?      A. Yes.

Q. You fellows would have been perfectly content if this Plaintiff's Exhibit 2 would be modified to that effect; that was the idea, was it?

A. I could answer that "Yes" or "No." I don't want to. It might influence the jury, if I answered it "Yes" or "No."

Q. You might influence the jury? You can answer "Yes" or "No." The Judge won't mind.

The Court: Answer "Yes" or "No" and you can explain the answer. [414]

A. I will answer yes, and also I have the right to explain.

Q. Yes, you have.

A. We made that answer "Yes" for the simple

(Testimony of William H. Flint.)

reason that this is a small town. We are both C.I.O. Locals, and the barge loading is a very small percentage of our work.

Q. Too small to bother about?

A. Actually it is.

Mr. Strayer: I would like to have the witness make his answer without interruption.

A. As long as it was that small, to avoid fighting and keep the sawmill going ahead—that was the only reason we gave up our work. We did not know—but we gave it up to keep going and furnish the men work who had not worked all winter long. That is why we gave up our jurisdiction.

Q. So, as I say, you were perfectly willing to modify this contract? A. That is right.

Q. And you were perfectly willing to send them a letter, or did send them a letter, telling them they could modify it and let the longshoremen do the work without objection from your Union?

A. Correct.

Q. You say that was a very small portion of the work there, this barge loading was too small to bother about?

A. It is, and still is as far as we are concerned. [415]

Q. And still is?

A. What I mean is, there were eight men or six men involved in barge loading, whatever it is, I am not sure, and there were one hundred men down there working. A small percentage of the employees were barge loaders.



(Testimony of William H. Flint.)

Q. We went into that yesterday. For your information, it wouldn't amount to much more than \$5,000 a year. That would be about your idea, would it?

A. I wouldn't know in terms of money.

Q. All right. After that letter was sent to the Company, did you receive a reply to that letter? Do you know? You were President by that time, I assume.

A. I don't know what you mean "by that time"?

Q. Well, after Mr. Peterson—strike that please. Do you recall the date Mr. Peterson went down to the mill? A. No.

Q. Was it after the meeting of April 9?

A. I don't hardly think so, because the picket line was up next morning.

Q. Was it between April 1 and April 9?

A. I imagine it was, that he went down there.

Q. Do you know if your Local received a reply to that letter?

A. I don't know. I don't think they did.

Q. You don't think the Company replied to it?

A. I don't know. I am not sure. [416]

Q. Did you have any conversation with officers of the Company to switch this work to the long-shoremen for peace in Juneau? A. Yes.

Q. Who did you talk to?

A. Mr. Hawkins and Mr. E. H. Card.

Q. How many times did you discuss this problem with them?

(Testimony of William H. Flint.)

A. I would say perhaps three or four times.

Q. They refused to follow the suggestions in your letter, did they? A. Yes.

Q. And these three or four different times you talked to them? A. Yes.

Q. Just to go back to one other matter, as I understand it the longshoremen came to see your Union on April 1 and told you they had had this contract with the Juneau Lumber Mills and that they had been paid and showed you time slips, etc.; that is true, isn't it?

A. They showed us withholding slips.

Q. Did they tell you how long they had had that contract with the Juneau Lumber?

A. That I am not positive about. It seems like they said they had been certified in 1938 by the National Labor Relations Board for all types of longshore work in Alaska. [417] Now, I am not positive about that either. I think that is what they said.

Q. Let's not "think."

A. You asked me, and I said I am not sure.

Q. I don't want guesswork. You don't know whether they said it or not?

A. It is all guesswork.

Q. Let's not have any guesswork. Do you remember how long they told you they had the contract? A. No.

Q. Do you recall whether they told you it was for general longshore work?

(Testimony of William H. Flint.)

A. They said it was for loading all the lumber products of the Juneau Spruce Corporation.

Q. They told you they did longshore work up and down the Coast, didn't they? A. Yes.

Q. By the way, did you know Mr. Rutherford? A. Yes.

Q. Did you know who he was? A. Yes.

Q. How long have you known Mr. Rutherford?

A. I worked one month for Mr. Rutherford when he was here.

Q. Do you know when he left?

A. I think he left sometime about May, 1947; June, maybe. [418]

Q. Are you sure he left before June?

A. I am not sure.

Q. You worked for him a month; when?

A. From the first of April to the first of May, when this Company took over.

Q. During that particular period, did you know him, personally, I mean?

A. No; I knew who he was.

Q. Did you go to him and, as head of the Juneau Lumber Mills, ask whether they ever had a contract with the longshoremen?

Mr. Strayer: What time?

Q. Any time, did you ever ask Mr. Rutherford if his Company had a contract with the longshoremen for the longshore work?

Mr. Strayer: I object.

A. He left here before I came into the Union.

(Testimony of William H. Flint.)

The Court: Don't answer.

Mr. Strayer: I object. It doesn't make any difference.

Mr. Andersen: Counsel misapprehends what I had in mind. He says he made an investigation to find out if there ever was such a contract. He said he knew Mr. Rutherford. I asked him if he asked Mr. Rutherford.

Mr. Strayer: A contract with the Juneau Spruce, not [419] the Juneau Lumber.

Mr. Andersen: Not the Juneau Spruce; the Juneau Lumber.

Mr. Strayer: It is immaterial.

The Court: As counsel pointed out on direct he testified to having made an investigation or at least by his Union, I don't know if he participated in it, and that was one of the things they investigated, if I recall correctly.

Mr. Andersen: That is why I asked the question.

Mr. Strayer: As I understand the testimony was that representation was made to them that the longshoremen had a contract with the Juneau Lumber and that it had carried over to the new Company which had taken over. My objection is upon the ground that it doesn't make any difference whether there was, in fact, a contract between the longshoremen and the Juneau Lumber. The question is, was any contractual relation binding on the Juneau Spruce Corporation.

Mr. Andersen: Counsel, not intentionally, of course, misquoted the record. I asked the witness

(Testimony of William H. Flint.)

a short time ago what the longshoremen stated. The witness stated that the longshoremen came to the Union and said that for years they had a contract with the Juneau Lumber Mills and had always done that work and in their opinion it carried on to the Juneau Spruce, and they carried on under the old contract. The witness said "Yes, that is what they said." Now, I asked [420] if he asked Mr. Rutherford, the former President—as far as I know he was the President of the Juneau Lumber—whether he asked Mr. Rutherford whether there ever was such a contract.

The Court: Objection overruled.

Q. Did you, sir? A. I did not.

Q. Were you on this investigation committee?

A. When I said investigation——

Q. Just answer my question. Were you on this investigation committee?

A. Actually, there was not an investigation committee.

Q. There wasn't an investigation committee? Well, maybe I am wrong. In my notes—but you say the I.W.A. made an investigation. Do you know who made the investigation?

A. Who made it? All of us. No one was elected to any investigating committee or were appointed to any investigating committee.

Q. The Union didn't do it officially—everybody did it? Is that what you mean to say?

A. Investigating? The committee wasn't for



(Testimony of William H. Flint.)

that purpose, but there was a Negotiation Committee which negotiated with the longshoremen.

Q. You say "nobody was appointed, everybody did it on their own." Which do you mean?

A. Well, the Negotiation Committee was trying to settle the [421] dispute and took it upon themselves to find out.

Q. Were you a member of the Committee?

A. Yes.

Q. Tell me what you did to find out whether there was any such contract with the Juneau Lumber.

A. I asked Local 16 and Mr. Albright to show us the contract where it showed they had that work. They never did.

Q. You asked them to show you a contract between the Juneau Lumber and the longshoremen?

A. That is right.

Q. Did you go to the Waterfront Employees, or is it the Dock Employers?

A. Something like that.

Q. Did you go to them?                      A. No.

Q. Did you go and ask the Company whether its predecessor Company had a labor contract regarding longshoremen?

A. No; I asked the longshoremen that.

Q. You didn't go to the Company and ask them, you didn't ask the Juneau Spruce if they knew whether the Juneau Lumber ever had a contract with the longshoremen?

(Testimony of William H. Flint.)

A. I didn't anyway.

Q. All you did then was ask the longshoremen, is that correct?      A. Right.

Q. Did you ask them for a contract between the Juneau Spruce [422] and the longshoremen?

A. Between the Juneau Lumber and the longshoremen.

Q. Who did you ask about that, please?

A. The various members; Wukich, Joe Guy—all the rest in the Local meeting.

Q. You asked practically every member of Local 16 if they ever had such a contract?

A. Seven or eight of them.

Q. And they said they didn't?

A. They didn't show it to me, wouldn't or something.

Q. Didn't they tell you there was a contract on the Pacific Coast? Didn't they tell you there was a Coast-wise contract for longshoremen?

A. Yes.

Q. And that was the contract that was in effect between the Juneau Lumber and the longshoremen here?      A. Yes.

Q. And did you go down to the Northland Transportation Company, a large outfit here, and ask if they knew anything about it?

A. No. I felt if there was no contract directly with the Juneau Lumber Mill it was of no concern.

Q. You mean the Juneau Spruce?

A. The Juneau Lumber Mill.

(Testimony of William H. Flint.)

Q. You took their word for it they had a Coast-wise contract? [423]

A. I took their word for the contract with the Juneau Lumber Mills.

Q. Did you ever go to one of their meetings and ask to see their contract?

A. We are not allowed to their meetings.

Q. To their Hall, or ask for or where you could get a copy? A. I asked the officers.

Q. What official? A. This Mr.——

Q. Mr. Wukich?

A. He was President at that time.

Q. What did he say?

A. He couldn't show me a copy.

Q. What did he say?

A. He said they had a Coast-wise agreement.

Q. And didn't have a copy; is that what he said?

A. I imagine if he had a copy—yes.

Q. Did he say he personally didn't have a copy of it or not?

A. I don't recall if he did or not.

Q. When he told you they had a Coast-wise contract you took his word for it, didn't you?

A. Yes.

Q. You heard about the Coast-wise contract and took his word for it, is that right?

A. Right. [424]

Q. And I assume you talked to other members of Local 16, had a conversation about the same thing; isn't that correct?

(Testimony of William H. Flint.)

A. I don't quite understand your line of questioning.

Q. You talked to other officers of Local 16 the same as you did to Mr. Wukich? A. Yes.

Q. And the answers and questions were about the same as with Mr. Wukich?

A. That is right; that they had a Coast-wise agreement.

Q. And the fact that Local 16 didn't personally have a contract with the Juneau Lumber Mills; you felt that it wasn't a good contract?

A. Yes.

Q. That is where the difficulties arose?

A. Yes.

Q. You are practicing a little law on the side, is that right? A. More or less.

Q. So that was the reason you finally took the position in view of the fact that Local 16 here didn't directly have a contract with the Juneau Lumber. You didn't feel that you fellows had to pay any attention to it?

A. We felt they misrepresented to us when they told us they did have a contract with the Juneau Lumber Mills. [425]

Q. Did you tell them anything about that at any other time—let me withdraw that. It doesn't make much sense. When did your Union, if you put it that way, come to that conclusion?

A. We came to that conclusion on the evening of July 2.

(Testimony of William H. Flint.)

Q. Before coming to that conclusion or immediately after that conclusion, did you discuss it with any members of Local 16? A. No.

Q. Did you ask any members of Local 16 to explain it to you?

A. We already had asked them if they had a contract. They said "No." There was no more explaining to do.

Q. When was that?

A. During this whole dispute we asked for this contract.

Q. They told you they never had a direct contract. They told you they had a Coast-wise contract; isn't that what they told you?

A. First they told us they had a contract with the Juneau Lumber. They didn't mention the Coast-wise contract. Afterwards all they could show us was a Coast-wise contract.

Q. Did they show it to you?

A. They might or might have not, I can't recall for sure.

Q. When did they first tell you they had a contract with the Juneau Lumber Mills? [426]

A. April 1.

Q. How long a period of time elapsed before you went to Mr. Wukich? Was he about the first man you talked to about the contract?

A. He was at the meeting.

Q. Which meeting?

A. We met about every day and about twice a day.



(Testimony of William H. Flint.)

Q. When did the question of a contract come up again?

A. After we got the idea something was wrong.

Q. When was that?

A. I imagine about a week or so after it happened.

Q. After the picket line?

A. After the picket line went up.

Q. You talked to Mr. Wukich?

A. Right. He was head of the Committee.

Q. You don't remember whether he showed you a contract?

A. I don't recall.

Q. He may or may not?

A. That is right.

Q. Didn't they tell you they worked under that contract for the Juneau Lumber Mills for years?

A. After the picket line went up.

Q. On April 1 didn't they tell you they had a contract and had had a contract with the Juneau Lumber Mills and always did the longshore work for them? [427]

A. With the Juneau Lumber.

Q. And April 1 they told you they had a contract?

A. Yes.

Q. And they always told you they had that contract?

A. Yes.

Q. You found that statement to be quite true, didn't you; that they always had a contract and always did the work for the Juneau Lumber Mills under that contract?

(Testimony of William H. Flint.)

A. No; I have never seen a copy yet of that contract with the Juneau Lumber Mills.

Q. Which contract?

A. The one they referred to April 1 which they had with the Juneau Lumber Mills. In the National Labor Relations Board hearing they brought up a Coast-wise agreement. That is the closest to a contract—of a contract with the Juneau Lumber Mills.

Q. Did you see it then?

A. I believe I did.

Mr. Andersen: I am about to start a new subject.

The Court: Go ahead.

Mr. Andersen: Shall we continue?

The Court: We will continue for a while.

Q. I assume that sometime after this business started here, after April 10, that all of the labor people here were quite anxious to get this settled?

A. Absolutely.

Q. You were, of course, and you had several meetings and discussed it with several people. You mentioned discussing it with Mr. Burtz, an officer of your International Union, is that true?

A. That is right.

Q. You say you discussed settling it with Mr. Garst?

A. Yes.

Q. And also Mr. Albright, described as a member, International representative of the International Longshoremen's and Warehousemen's Union; is that true?

A. Right.

(Testimony of William H. Flint.)

Q. When did you first meet Mr. Albright?

A. I believe it was May 8, the same day as I met Mr. Burtz.

Q. May 8 or 15? I have the fifteenth down here.

A. No; May 8.

Q. At that meeting was any suggestion made about arbitrating this difficulty?

A. I am quite sure that was the meeting. I am not positive—that was the meeting where Mr. Burtz—

Q. Suggested it be referred to the C.I.O.?

A. I think so.

Q. And if it was referred to the National C.I.O., that it would be forever and a day and it would be better to have the Local settle it? [429]

A. I am not sure if that is his answer.

Q. Wasn't that his answer?

A. I am not sure.

Q. Weren't you there? A. Yes.

Q. Can't you recall? A. Not every word.

Q. This meeting by yourself, Mr. Albright, Mr. Burtz—by the way, how did you happen to meet Mr. Albright?

A. I met him in the morning of May 8. I was with—I met him at the Baranof Hotel. I think I was with our Regional C.I.O Director up here at that time and was introduced.

Q. Who was that? A. Chris Hennings.

Q. You were introduced to Mr. Albright?

A. I am quite sure by Chris Hennings.

(Testimony of William H. Flint.)

Q. You arranged for the meeting of the eighth?

A. Yes.

Q. Who did?           A. I did.

Q. You called Mr. Albright, did you?

A. After our official arrived from Portland that same day, Mr. Burtz, why we both contacted Mr. Albright and had Mr. Albright contact Local 16.

Q. And you wanted Mr. Albright to set in a meeting and discuss [430] a settlement and get his idea and advice on it?           A. That is right.

Q. How long did that meeting last? .

A. I imagine an hour, off hand.

Q. In this meeting, as I recall your testimony, this is the meeting at which nothing was drawn up?

A. That is right.

Q. Nothing was drawn up?

A. Nothing was drawn up.

Q. Mr. Albright—by the way, was anybody else there with Mr. Albright or was he there alone?

A. He had the Local 16 boys with him.

Q. Who was spokesman for Local 16 there?

A. Mr. Albright seemed to be speaking for both.

Q. Mr. Albright did the speaking?

A. Right.

Q. Did he tell you Local 16 asked him to attend the meeting?

A. No; not that I recall, because I asked him.

Q. Did you ask him to get ahold of Local 16 and attend the meeting?           A. Right.

Q. And for the purpose of seeing if Mr. Albright could settle this dispute?

(Testimony of William H. Flint.)

A. I felt——

Q. I mean, is that what you told him? [431]

A. I don't know word for word. It is almost a year ago.

Q. I don't want it word for word, just the bare facts. Did you meet and say something like this: "Mr. Burtz of our International is here in town and Mr. Garst. Suppose you get ahold of Local 16 and come on over and see what we can do about settling this trouble." Is that about it?

A. No. Mr. Albright and I were together when we met Mr. Burtz. Mr. Burtz asked for a meeting. I turned to Vern and asked if he could get Local 16 and try to settle the dispute.

Q. And Mr. Albright sat in the meeting? Did he offer any suggestions about how it could be settled? A. Yes.

Q. Did he say anything at all? A. Yes.

Q. Did the members of Local 16 talk?

A. Yes.

Q. About some possible basis of settling the dispute, is that correct? A. Yes.

Q. How long did that meeting last?

A. About an hour.

Q. One hour; and that letter, could I see it please? Exhibit 6. Then you had another meeting about a week later?

A. About a week, I imagine. [432]

Q. Did you see Mr. Albright in the meantime, if you recall?



(Testimony of William H. Flint.)

A. I think I did; I imagine I did.

Q. You don't recall anything, a meeting that occurred at that time, but the next talking was the fifteenth?

A. I was with Mr. Albright practically every day from the eighth day of May until towards the fifteenth.

Q. During this time he was trying to settle the strike—that was all he was talking about?

A. Yes; that is right.

Q. On the fifteenth you had this meeting where this letter of May 14 was discussed; is that correct?

A. That is right.

Q. Do you know if you requested that this letter be written?      A. No.

Q. Do you know who requested it be written?

A. Mr. Albright.

Q. Requested that the letter be written up?

A. Yes. Mr. Burtz explained what had happened previously to my coming there.

Q. What was explained?

A. He explained that Mr. Albright asked that Mr. Garst, who was neutral, go to the Company and get a letter of jurisdiction.

Q. Requested that Mr. Garst go to the Company to get a letter of jurisdiction about a possible settlement of the dispute? [433]

A. A letter of jurisdiction as to what the Company felt each Local should have.

Q. And that was this letter, Plaintiff's Exhibit

(Testimony of William H. Flint.)

6, which you discussed there at that time, is that right?      A. Right.

Q. How long did this meeting last?

A. That meeting started out about two thirty in the afternoon—at least that is when I arrived—and went on, off and on, until four o'clock the next morning.

Q. When did you leave?      A. Four o'clock.

Q. In the morning?

A. Yes; that is right.

Q. That was a long time to try and settle a dispute, wasn't it?      A. It certainly was.

Q. Now did you have after that, did you have another meeting? When did Mr. Albright leave that meeting?

A. He left the meeting in the afternoon of May 8.

Q. We are now on the fifteenth. I am talking about the meeting of the fifteenth.

A. I meant the fifteenth; fourteenth or fifteenth. He left the meeting the first time about oh, I would say about half past four.

Q. Morning or afternoon?      A. Afternoon.

Q. When did that meeting start, the meeting of May 15?

A. That is the one that started in the afternoon.

Q. About four o'clock, and when did Mr. Albright leave the meeting?

A. It started at half past one or two and about two thirty I came in and he left about four or half past.

(Testimony of William H. Flint.)

Q. Did he come back any more?

A. We moved the meeting from our hotel to his hotel, to the Gastineau.

Q. When did you move the meeting?

A. We all got together about seven o'clock in the evening.

Q. Is that when the letter was discussed, Exhibit 6, or had it been discussed before?

A. Before and at that time also.

Q. And then you continued to discuss ways of settling the strike or lock out, is that right?

A. Yes.

Q. Nothing was accomplished that night, was it?

A. No.

Q. I assume the members of Local 16 there were anxious to work out some basis of settling it?

A. I wouldn't say "anxious."

Q. They talked about ways and means of settling the difficulty?

A. They talked one way.

Q. Did they make any suggestions?

A. Only one. They all made the same one.

Q. Did you make any suggestions to them?

A. I don't recall if that is the meeting where I made a suggestion about a Union Shop election or not. It may have been.

Q. At the meeting did you make any suggestions to the longshoremen about how the strike could be disposed of?

A. I don't know. I don't recall.

Q. Now, at the meeting of May 8, did Mr. Al-

(Testimony of William H. Flint.)

bright at that meeting suggest that the matter of arbitration be taken up and have some local person arbitrate the matter?

A. I don't recall. He may have.

Q. On May 8. Did he make the same suggestion on May 15?

A. He might have. I don't know.

Q. Mr. Albright made that suggestion quite a few times?

A. I don't recall him ever making it; no.

Q. You say he may have; don't you have any——

A. That was a year ago. There have been so many suggestions. He may have, but at the same time I can't swear to it.

Q. Somebody suggested arbitration, but you don't know who?

A. If I say "No," then I know. There were so many ways and suggestions; I can't swear to all of them. Some of them I can.

Q. I am only talking about one statement, one suggestion. I [436] asked you if Mr. Albright at the meeting of May 8 made a suggestion that the matter be submitted to arbitration. Didn't he say "Let's get the Company and everybody involved and sit down before some impartial person in Juneau and get it settled in a hurry"?

A. I don't recall.

Q. May 15 didn't he suggest that the matter be submitted to arbitration?      A. I don't recall.

Q. Did you attend the Mayor's fact finding committee?      A. No.

(Testimony of William H. Flint.)

Q. Did you ever recall hearing Mr. Albright say anything about arbitration?

A. No, I don't think I did.

Q. Who suggested, as you testified a little while ago, that the matter be referred to the National CIO for arbitration there?

A. That was made by our representative, Virgil Burtz.

Q. To whom did he say that?

A. Mr. Albright.

Q. And did Albright say anything about that?

A. He said "No."

Q. What else did he say besides "No"?

A. I just can't recall. I know the end result was "No."

Q. Didn't he say, referring to the National CIO, "It will [437] have to wait the outcome of an Executive Board meeting of the National CIO, which will take forever and a day. This is a Local dispute; let's get it settled by local arbitration." Didn't he say that or words to that effect?

A. I can't swear to that.

Q. Did he say that or a lot of different words?

A. A lot of different words.

Q. You wouldn't say he didn't say that?

A. No, I couldn't say either way.

(Whereupon the jury was duly admonished and Court adjourned until ten o'clock a.m. May 4, 1949, reconvening as per adjournment with all parties present as heretofore and the jury



(Testimony of William H. Flint.)

all present in the box; whereupon the trial proceeded as follows:

The Court: You may proceed.

Mr. Strayer: May I inquire if counsel has the records that we requested?

Mr. Andersen: So far we have been unable to find any.

Mr. Strayer: Do you have the name of the Local Secretary?

Mr. Andersen: There is no Secretary of the Local at this time.

Mr. Strayer: Who has charge of the records?

Mr. Andersen: I think Mr. Pearson, but I will check [438] and let you know.

(Whereupon the witness William H. Flint resumed the witness stand and the Cross-examination by Mr. Andersen continued as follows:)

Mr. Andersen: Will you read the last question, Miss Reporter?

Court Reporter: "To whom did he say that?"

A. "To Albright." Q. "And did Albright say anything about that?"

A. "He said 'No'." Q. "What

else did he say besides 'No'?" A. "I just can't recall. I know the end result was 'No'."

Q. "Didn't he say, referring to the National CIO, 'It will have

to wait the outcome of an Executive Board meeting

of the National CIO, which will take forever and a

day This is a Local dispute; let's get it settled by

local arbitration.' Didn't he say that or words to

that effect?" A. "I can't swear to that." Q. "Did

(Testimony of William H. Flint.)

he say that or a lot of different words?" A. "A lot of different words." Q. "You wouldn't say he didn't say that?" A. "No, I *could* say either way."

Q. Over the night, has your memory been refreshed as to what Mr. Albright said at that meeting? A. No, it hasn't.

Q. During all that conversation, which was May 8 or 15, the date is immaterial for the purpose of the question, do you recall any conversations with Mr. Albright in which [439] Mr. Albright referred to the possibility of arbitration?

A. I don't think so.

Q. Do you recall any conversation at all with Mr. Albright, whether the conversation was with you or you were simply present, and where Mr. Albright made a general statement so far as Local 16 was concerned, that it would consent to arbitration, negotiation, mediation or conciliation by the Government or a resident of Juneau agreeable to the parties?

A. That question—you have a double question there. To the first part, of outside conciliation, I believe the answer was always "No," but so far as local conciliation, I believe they would have agreed to that.

Q. I am asking you during any conversation where you were present, whether you participated in the conversation or not, did any representatives of Local 16, including Mr. Albright, make any statement that they would at any time consent to arbitration of this dispute?

(Testimony of William H. Flint.)

A. As far as I can recall——

Q. They did? I am asking if they said that.

A. I would say "No."

Q. Are you stating your opinion, that they would have agreed to local arbitration?

A. By a local conciliator; yes.

Q. Did they say that? [440]

A. That I am not positive of.

Q. On what do you base that conclusion when you say they would have agreed to arbitration or conciliation?

A. Because all during this dispute we would get together and talk, perhaps in a restaurant, or passed or met one or the other and it always seemed to be the idea behind the conversation that they could have conciliation with the Company. For instance, we would see a Labor Department man here in Juneau or someone else locally, but I don't think it came up, the fact of consenting to an arbitration committee of outside interests.

Q. You understand from everything that was said during all the time of this strike, whether Mr. Albright was here or not, so far as Local 16 was concerned, at all times they were understood by you as being willing to have the matter arbitrated?

A. I would say "No" to that.

Q. I beg your pardon?

A. My answer to that is "No."

Q. Part of the time were they agreeable to arbitration?

(Testimony of William H. Flint.)

A. I would say "No" to that question.

Q. Why do you say "No" to that?

A. They would go for local conciliation but not outside.

Q. I am talking about local.

A. Then I would say "Yes." [441]

Q. Do you—whether or not it was local conciliation—by conciliation do you mean arbitration?

A. I usually have found that the words "arbitration" and "conciliation" are used in almost the same sense of the word.

Q. "Conciliation," for the purpose of this conversation, will mean "arbitration"; is that satisfactory to you?      A. Yes.

Q. You discussed arbitration — conciliation— with Local 16 on several occasions?

A. Yes, sir.

Q. You discussed arbitration with a local Labor Department man?      A. Yes.

Q. Who was that? Do you know his name?

A. Whoever was in the Labor office.

Q. A Territorial official?

A. Territorial Commissioner of Labor; Henry Benson or his assistant.

Q. Did you discuss arbitration with the Company?      A. Yes.

Q. In the presence of representatives of Local 16?      A. No.

Q. Did you ever discuss arbitration with the Company in the presence of Mr. Albright? [442]

(Testimony of William H. Flint.)

A. Yes, I did. I will take that back. The other question—I did discuss it a little with Mr. Albright and one of the Local boys.

Q. When was that?

A. I would say about November 15, perhaps.

Q. Of 1948? A. 1948.

Q. Then you have discussed the possibility of arbitration with the Company, have you?

A. Yes.

Q. And you have discussed arbitration with representatives of Local 16? A. Yes.

Q. But you never discussed arbitration with representatives of the Company when representatives of Local 16 were present; that is my understanding?

A. Only that once I just mentioned, last year, of November 15, or whatever it was.

Q. Were representatives of the Company present then? A. Yes.

Q. And that was when?

A. November 15; somewhere in there—the middle of November sometime.

Q. Prior to that date you had not discussed the matter of arbitration with both parties together, that is, the [443] Company and Local 16?

A. I don't believe I did.

Q. And during all that time Local 16 was willing to arbitrate?

A. With a local conciliator; that is right.

Q. And the Company refused to arbitrate?



(Testimony of William H. Flint.)

A. Yes.

Q. And November 18, or whenever it was—November 15 or 18 of last year—Local 16 was still willing to arbitrate, was it? A. Yes.

Q. And no arbitration meeting has ever been held, has it?

A. Only between us and Local 16.

Q. You people had agreed among yourselves they could do the work, so it was not a matter to be arbitrated, but so far as Local 16 and the Juneau Spruce Corporation, they never sat down to arbitrate because the Company wouldn't sit down to arbitrate; that is true? A. Only once they did.

Q. Did they ever sit down to arbitrate?

A. I don't know what words—they sat down in one group and talked it over.

Q. That is negotiation—did they ever agree to arbitrate? A. Who?

Q. Juneau Spruce and the ILWU, although you were not a [444] necessary party.

A. All three parties to arbitrate, you mean?

Q. Yes.

A. As far as I know, all three parties never agreed at the same time anyway.

Q. Do you know of any time that the Juneau Spruce Mills agreed to arbitrate this whole issue?

A. I don't think they ever did; no.

Q. Never did? A. No.

Q. They refused on November 15 of last year to arbitrate, didn't they?

A. I couldn't answer "Yes" or "No" to that

(Testimony of William H. Flint.)

directly, because it was a roundabout method there and——

Q. In any event——

Mr. Banfield: I object to having counsel cut off the answers in the middle and ask for an answer. He said he couldn't answer "Yes" or "No" and wanted to state why. He has the right to do that.

Mr. Andersen: Will you read the answer, Miss Reporter, so he could complete it?

Court Reporter: "I couldn't answer 'Yes' or 'No' to that directly, because it was a roundabout method there and——"

A. That was a case of where their Local 16, our Local and the Company met and the Company did agree that if Local 16 [445] and our Local came to some agreement over jurisdiction at that time that then they would look the agreement over and see if they would agree to it.

Q. I am talking about arbitration, Mr. Flint. You understand what arbitration is, don't you?

A. Well——

Q. That is where two parties to a dispute agree upon a person, like a judge, to settle it. The Juneau Spruce on April 18 didn't agree? A. No.

Q. Your Union and Local 16 were willing to arbitrate at the time, weren't you? A. No.

Q. When did you change your mind? You stated a moment ago——

A. I don't believe I said on that time where we were willing to arbitrate——

(Testimony of William H. Flint.)

Q. Did you change your mind about arbitration?

A. Our whole Local changed our minds after they went back to work.

Q. You weren't willing to arbitrate it after that?

A. No.

Q. You were never willing to arbitrate this dispute? A. Yes.

Q. And you are not now?

A. I can speak for myself and not speak for the Local. [446]

Q. So far as you personally are concerned—

A. From what I personally and from my Local—their opinion is that they are not, either, according to their last vote.

Q. Just to button this up, the Juneau Spruce Corporation never at any time agreed to arbitrate this matter? A. As far as I know they didn't.

Q. And as far as you know Local 16, from the time the dispute started until this moment, had always expressed willingness to arbitrate?

A. I can't answer "Yes" or "No" on that either.

Q. At anytime did they ever refuse to arbitrate this, as far as you know?

A. Like I say, they did consent to any local conciliation, but not to any outside conciliation.

Q. Did they ever refuse to have an Alaskan arbitrator arbitrate this dispute? A. No.

Q. With respect to this barge, you said the barge was loaded sometime or other, this barge you saw at Tacoma?

(Testimony of William H. Flint.)

A. I would say the barge was loaded—it was in the month of August sometime.

Q. August of 19——? A. 48.

Q. 48. And what business took you to Tacoma?

A. At that time I went to the International convention in Portland for IWA men.

Q. And you went over to Tacoma, did you?

A. Also; yes.

Q. And you say you saw a barge there?

A. The barge was there; that is right.

Q. And there was lumber on the barge?

A. Lumber on the barge.

Q. How long did you stay there, by the way?

A. On the way to Portland I stopped in Tacoma for one afternoon and on the way back I stopped in for, probably I was there eight hours, I imagine—six or eight hours.

Q. Over how long a period, a day? Did you see it on the same day or successive days or when?

A. When I went down, or the second time I was in Tacoma, I saw it.

Q. In other words you saw it on one occasion, is that correct? A. Yes.

Q. Just one occasion? And that was when?

A. That would be about October the 16th or 17th; I am quite sure.

Q. Did that barge have the name of Juneau Spruce on it, if you know, or was it—— [448]

A. I believe that was—it had the name of the company who they get their barges from sometimes. I can't recall what company it is.

(Testimony of William H. Flint.)

Q. Are you trying to tell us you recognized the barge?

A. As the one that left here; that is right.

Q. During the time from May 8, when I understand you first met Mr. Albright, how many discussions did you have with him?

A. Like I said yesterday, we had quite a number of regular meetings, planned meetings which we called, and I would meet him on the street several times a day.

Q. The street things would be a sort of curbstone conversation of a momentary nature?

A. That is right.

Q. The others are the ones you would schedule with Local 16?      A. That is right.

Q. And sometimes Mr. Albright would be there and sometimes he would not be there?

A. As a rule he was there. Sometimes he wasn't.

Q. When was the last meeting, do you recall?

A. With Mr. Albright?

Q. The last meeting Mr. Albright attended, so far as you can recall.

A. On November, about the end of November I think.

Q. Of 1948? [449]      A. 1948.

Q. Now, Mr. Albright—you said he left around the end of May, didn't he?

A. As I recall he did leave for a short while.

Q. He left around the middle of May and didn't come back until around the first part of July, isn't that correct?



(Testimony of William H. Flint.)

A. I don't know when he came back.

Q. Do you recall seeing him during the month of June at all?

A. I don't think I did. I couldn't swear I did.

Q. Do you recall seeing him during the month of July?      A. Yes.

Q. Do you recall seeing him more than once? There was a celebration here at that time, the Fourth of July?

A. The Fourth of July; that is right.

Q. Do you recall seeing him during the period of that celebration?

A. No, I didn't during the celebration.

Q. Do you have any definite recollection of seeing him more than once during the month of July last year?

A. I recall seeing him after one of our regular Local dates when we meet. I saw him after that meeting. That must have been about the middle of July.

Q. One of your meetings? An IWA meeting itself?      A. Right.

Q. Or an IWA meeting with the ILWU 16?

A. IWA.

Q. That was in July?      A. Yes.

Q. You just saw him?

A. I talked to him.

Q. With some member of Local 16 also?

A. He was sitting with a couple of members, if I recall correctly.

Q. Where?

(Testimony of William H. Flint.)

A. At the CIO Hall lobby.

Q. You sat down and talked with him?

A. No, I walked up and talked to him for a few minutes.

Q. Do you recall what the discussion was about then?      A. Yes.

Q. What did you talk about then?

A. There had been an article in the Empire, our local newspaper here, and in this article it stated some things I had said about Albright which I had not said, and Albright went on the radio and said they were wrong.

Q. You wanted it corrected?

A. I went over to Albright and said that they were wrong and had put a correction in myself.

Q. That was in July? I guess that isn't an important aspect.      A. Not that I know of.

Q. That was the last time you saw him in July?

A. I can't recall. I don't know if I saw him again. I might have.

Q. You have no recollection of seeing him and discussing with him this dispute in July, except that one discussion?      A. That is right.

Q. Do you recall seeing him in the month of August, 1948?      A. Not that I recall of.

Q. Do you recall seeing him in the month of September?

Mr. Banfield: If the Court please, I object to this line of questioning. I can't see any importance as to what months they were. He testified he met with him any number of times, but a question as

(Testimony of William H. Flint.)

to every month in the year, just when Mr. Albright was here and when he wasn't here—I can't see that it has any materiality.

The Court: He has a right to find out what this man's dealings were, so to speak with Mr. Albright, but it seems to me instead of asking the witness as to specific months, wouldn't it be just as well to ask as to the intervening period, July-November?

Mr. Andersen: Maybe I have a different idea in mind. I don't want to be presumptuous.

The Court: Objection overruled.

Q. Did you see him in the month of August?

A. No, so far as I recall.

Q. Did you see him in the month of September?

A. As far as I know I didn't.

Q. You saw him how many times in November?

A. Let's see—I would say about four times.

Q. And after November until this trial began, did you see him at all?

A. Not that I can recall.

Q. As I understand it then, on your direct examination, as I understood it—I may have been in error—you talked with him, met with him, about one hundred times. Of course that isn't correct?

A. I was using that phrase to mean all the times we met, on the street, and all the times we met—it might have been one hundred times, maybe not.

Q. You only had a few conversations with Mr. Albright regarding this situation at the Juneau Spruce, isn't that true?

(Testimony of William H. Flint.)

A. Every time I met Mr. Albright we talked about this, I am quite sure.

Q. Of the one hundred conversations you had with him you can remember about four where you really discussed this problem?

A. Where I can come down and get an actual date or——

Q. Or the substance.

A. I know I talked to him.

Q. That is about four conversations which you can recall and having some bearing on the subject discussed here, and [453] each of these situations were—strike that. On each of these four occasions that you mentioned, he was with representatives of Local 16, I assume?

A. You mean in the month of November?

Q. Pardon me, the four times you met with him where this general situation was discussed, was he with representatives of Local 16?

Mr. Strayer: Your Honor, the witness testified there were more than four times in November alone.

Mr. Banfield: Counsel is specifying four times out of the one hundred he is talking about.

The Court: I assume he embodied in the questions what had already been testified to by the witness, but if the form of the question is unwarranted I guess the witness can call his attention to it.

A. I would like to, your Honor.

The Court: Go ahead.

A. I testified I met Mr. Albright during the month of November four times.

(Testimony of William H. Flint.)

Q. You mean you testified a few moments ago that you talked with him once about the eighteenth of November and maybe another four times you talked with him about the discussion here?

A. You asked me how many more times in November.

Q. Tell me how many times you met with him in November and [454] discussed this dispute with him?

A. I met him the first time in the Company's office.

The Court: All he asked was the number of times. Just answer that.

A. Five times.

Q. All right. In November, where did you meet the first time and give me the date if you can, or the approximate date?

A. In the Company's office about the middle of November.

Q. Who was present at that time?

A. Mr. Albright and one of the Local boys of his Local and our manager, Mr. Schultz and myself and one of our Local Shop Stewards.

Q. Is that the time—strike that. And when is the next time you met him in November?

A. The next time was, I am quite sure, Thanksgiving Day in the Longshoremen's Hall.

Q. Thanksgiving? A few moments ago you testified it was November 15 or 18; is that correct or incorrect?



(Testimony of William H. Flint.)

A. That was in the Company's office.

Q. What was the date of your first meeting?

A. About the 15th or 18th or around the middle of November.

Q. The next meeting was Thanksgiving—dinner or something?

A. No; it was a meeting in the Longshoremen's Hall.

Q. Did you discuss this dispute with him at that time? [455]

A. Yes.

Q. When was the next time?

A. In his hotel room in Juneau, in the Gastineau Hotel. I am not quite sure but I think it was a matter of a day or so later.

Q. Do you recall what was discussed then?

A. We talked about this dispute.

Q. When was the next time you met him?

A. The next time I met him all alone in the Gastineau Hotel with one of my Local Shop Stewards.

Q. Do you recall what was discussed then?

A. The same thing, this dispute.

Q. And the next time?

A. A couple days after that. They were a few days apart, each meeting.

Q. Do you know when you met him again?

A. That was our last meeting, I think. I am quite sure it was.

Q. The last question which brought up this was, I said during the entire period of time, I said you

(Testimony of William H. Flint.)

mentioned you had about one hundred meetings and you said that included street meetings and everything. I understood you to say that there were one hundred times you saw him and a few minutes later you said there were about four, where you actually sat down and discussed this. Did you understand that? [456]

A. No, I did not.

Q. These times you mentioned—how many meetings were there where you sat down and really discussed this problem?

A. You mean from the start of the dispute until the present time?

Q. It couldn't be before May 8.

A. That is right. We actually sat down and discussed this at a called meeting perhaps fifteen or twenty-five times.

Q. And during all these meetings Mr. Albright, the theme of what he was saying was, so far as Local 16 was concerned, they wanted arbitration, conciliation or negotiation in some manner to try and end it on that basis?

A. I can't answer it "Yes" or "No."

Q. Answer it one way and then explain it.

A. I can say "Yes" and then I can say that from start to finish of this dispute that their basis—

Q. I am just talking about from May 8.

Mr. Banfield: Let him answer.

The Court: I think he should be allowed to finish.

A. Yes; and then as I say, from start to finish

(Testimony of William H. Flint.)

Albright and Local 16 were willing to have this arbitration, or sit down and negotiate it on one basis only—that they get the work of loading lumber on barges at the Juneau Spruce, and no other method would work, arbitration or anything else. They would sit with anybody at any time and tell [457] them they wanted to load the barges at the Juneau Spruce.

Q. Have you completed your answer?

A. I have.

Q. Did I understand you to say—I will put it another way. The dispute at the Juneau Spruce was just on—on April 9, of 1948, the dispute was who was going to load the barges. Wasn't that the dispute?

A. Who was going to load barges?

Q. That was the only issued involved, wasn't it?

A. As far as I know it was; yes.

Q. When Local 16 talked about arbitrating, didn't you understand that by arbitrating this business, the only question for arbitration would be to decide which men would load the barges?

A. On arbitration, I would say "No."

Q. What is your idea of arbitration, Mr. Flint?

A. I would say arbitration—if I asked for something and another fellow asked for something, and we sat down and talked it over, we would both have to give a certain amount. That is my idea of arbitration.

Q. That is negotiation. I don't like to talk to a person unless we understand the same terms. Let me explain.

(Testimony of William H. Flint.)

Mr. Andersen: I am sorry, may it please the Court.

Q. If you were the longshoremen and I were the I.W.A. and you and I both agreed that the longshoremen would load the [458] barges, then there would no longer be an argument about it, so far as we are concerned. A. True.

Q. There would be nothing to negotiate, nothing to arbitrate; isn't that so? A. Right.

Q. Because we are in agreement. If the Judge up there, make him the Spruce Company for a moment, if you and I agreed who would load the barges and the Judge, the Spruce Company who really has no interest in it, refused to let the longshoremen load the barges and agreed to arbitrate, the question would be—wouldn't it be who would load the barges? A. That would be the question; yes.

Q. So, when you were talking about arbitration a short time ago, didn't you understand the question would be who would load the barges; isn't that what you understood?

A. No; I understood who—or where both parties helped in loading the barges, they would have to come to an agreement.

Q. Didn't you understand that whatever the arbitrator said would be binding on both parties?

A. I didn't know that the arbitrator's ruling was the last word in any dispute until all of the ones in the whole dispute had agreed to it, in the end, after he had made [459] a ruling, and then if they all agreed to it, it would be what would go.

(Testimony of William H. Flint.)

Q. Local 16 said "Let's appoint an arbitrator, put all the facts before him. Whatever the arbitrator says will be binding on us." Didn't they say that? A. Words to that effect; yes.

Q. So the question of who would load the barges would be referred to an arbitrator, where the Juneau Spruce Company and the longshoremen—and not you people, because you already agreed that the longshoremen could do it—would state facts to the arbitrator and the arbitrator would say they would load them, or either that the longshoremen would not load them. You understand that clearly, don't you?

A. Part I don't understand. I never heard Local 16 say that if the arbitrator said they would not load them, that they would consent to that.

Q. Did you ever ask them the question, or did you talk to them, not knowing what arbitration meant, or conciliation meant, or mediation meant—do you understand those terms?

A. I thought I knew them before I got up here.

Q. I think you did, too, when I talked to you before about the longshoremen agreeing to arbitration and the Company refused. You knew what the Company was refusing to arbitrate, the question of whether the longshoremen would load [460] the barges or not; isn't that true? A. Yes.

Q. Of course it is. It is the Company who refused to arbitrate, not the longshoremen; isn't that right?



(Testimony of William H. Flint.)

A. I couldn't answer that "Yes" or "No" either.

Q. Answer it one way and then explain it.

A. I would say "Yes," that they would not arbitrate it.

Q. Who, the Company?

A. The Company, but at the same time the Company knew that Local 16 would consent to only one end result and that is that they would load the barges.

Q. You are getting me confused now. Are you trying to tell us that the longshoremen—putting it another way, are you trying to tell me now that the Spruce Company refused to arbitrate the question of who would load the barges, but at the same time that the longshoremen said "We will consent to arbitration provided we win." Is that what you are trying to tell me?

A. That is about the size of it. I would like to explain some, your Honor.

The Court: You can explain.

A. I would like to know—ask anyone in this courtroom—how you can have any kind of arbitration——

Q. You are not allowed to ask questions. You can explain your answer, but not interrogate the audience. [461]

A. The way arbitration has been used in this dispute from start to finish; there can be no arbitration when all parties concerned want one end result, when the longshoremen want to load the barges and

(Testimony of William H. Flint.)

the Company wants the I.W.A. to load the barges, there can't be any arbitration on either side.

Q. There can't be? A. No, there can't be.

Q. Why do you say that?

A. I don't see how it can be.

Q. You had no argument on April 10?

A. April 10; no.

Q. You said you would let the longshoremen load the barges? A. Yes.

Q. And the Company said they wouldn't?

A. Yes.

Q. The longshoremen said they wanted to, and they said the I.W.A. is agreeable to us loading the barges; that is correct, isn't it?

A. Yes, that is right.

Q. The only question would be who would load the barges? A. Yes.

Q. We will take all your answers together and I think we can skip this subject. Then in one of these meetings you referred to, to button this aspect of the case up,—strike [462] that. During any of these meetings where arbitration was discussed, was Mr. Benson, the Territorial Commissioner of Labor, present? A. Yes.

Q. And were you present?

A. I was present with Mr. Benson and the Company.

Q. Yes. When arbitration was discussed?

A. Yes.

Q. Now, in all of these meetings that we have

(Testimony of William H. Flint.)

talked about here, as I understand it, and to end this aspect of it, the purpose of these meetings was to try to work out some solution to resolve the dispute. Is that true?      A. That is right.

Q. That is particularly true of the meetings attended by Mr. Albright with members of Local 16; is that right?      A. Right.

Q. And true of these other meetings with Mr. Albright, as he expressed himself, "to find some amicable way of ending the trouble then existing." Is that true?

A. Yes, as long as the Local 16 could load the barges.

Q. Did Mr. Albright—did I understand you to say that Mr. Albright never consented to arbitration and said "We will consent to arbitrate this dispute if we win it?"

A. That is about what I would sum it up as; yes.

Q. You are saying that Mr. Albright never [464] consented to arbitrate; isn't that true?

A. I will have to say I got the words "arbitration" and "negotiation" mixed up.

Q. Do we have to start this all over again? When you talked about negotiations to get the work done, when you talked about arbitration you meant—

A. Local 16 was always willing to set down and thrash this thing out.

Q. With the mill?

A. The mill and us, with the thought that they would load the barges.

(Testimony of William H. Flint.)

Q. Certainly. We'd better explain the terms again. Everything you said as to arbitration should have been referred to as negotiations. Is that true?

A. Perhaps you are right.

Q. That means, therefore, so far as negotiations with the Company is concerned—particularly at this early stage when probably there was more talking than later—that Local 16 representatives always said they would negotiate with the Company “with the consent of the I.W.A. we can do this work. The Company has no reasonable basis for not giving us the work and so we want the work.” Is that true?

A. Yes.

Q. Substantially so. They changed their position and said [464] they would arbitrate the issue and whatever the arbitrator says about this work, we will be governed thereby?

A. I believe you are right, that they consented to a local arbitrator.

Q. And whatever he said regarding loading barges they would be bound by?

A. If that is what arbitration is. If they used the word “arbitration” and consented to arbitrate, I imagine that is what they meant.

Mr. Strayer: I move the last answer be stricken.

Mr. Andersen: It is cross-examination.

The Court: Did you say the last answer be stricken?

Mr. Strayer: Yes, your Honor. He testified to what he imagined the longshoremen meant.

(Testimony of William H. Flint.)

The Court: Of course, the world "imagine" wouldn't make the answer subject to being stricken. That is so often used in a sense of believing or thinking. In view of the fact that counsel has had difficulty finding out just what the witness meant by these several terms and some of his answers, I think the motion will have to be denied.

Mr. Andersen: Would you read the last question and the last answer?

Court Reporter: Q. "And whatever he said regarding loading barges they would be bound by?"

A. "If that is what arbitration is. If they used the word 'arbitration' and consented [465] to arbitration, I imagine that is what they meant."

Q. Is that correct, sir—your last answer?

A. That is correct.

Q. In these fifteen or twenty meetings you talked about the difficulty the Union was having?

A. That is right.

Q. And you wanted the Union to remove the picket line? A. Right.

Q. You fellows wanted to return to work if you could, honorably? A. Right.

Q. Was it during this discussion of the picket line that this question of arbitration came up as the basis of settling this dispute, because you fellows wanted it settled?

A. I believe that is when it came up, during those discussions.

Q. When you discussed it with representatives



(Testimony of William H. Flint.)

of Local 16 you discussed the whole situation, that you wanted to return to work if possible, wanted the longshoremen to do the loading, and wanted to figure any way of settling so the picket line can be removed; is that correct?

A. I can't answer it all "Yes" or all "No."

Q. I will split it up. Probably all the discussions about the picket line resolved themselves into how the whole matter can be adjusted; that is correct?

A. Correct. [466]

Q. And these discussions were usually held with representatives of Local 16 and sometimes Mr. Albright was present; is that what you say?

A. That is right.

Q. And sometimes Mr. Albright might speak for the Local and at other times other members might speak for the Local. Is that true?

A. That is right.

Q. I assume during this period of time that as you indicated before, that you occasionally talked to Mr. Albright to get advice from him as an old head about trade unionism and such as that? Is that correct?

A. I don't know that I ever asked him for any advice or not. I may have.

Q. You have no recollection?

A. No recollection of a specific instance.

Q. During the time that Mr. Albright was here you got along all right with him, did you?

A. Yes; always have.

(Testimony of William H. Flint.)

Mr. Andersen: Just a moment, your Honor. That is all. Thank you. [467]

Redirect Examination

By Mr. Banfield:

Q. Mr. Flint, you testified here yesterday regarding your job and what the Company was doing down at the plant during the winter of 1947-1948, a year ago this last winter. What did they do down at the plant? A. You spoke of 1947-1948?

Q. Yes.

A. Yesterday I spoke of 1948 and 1949.

Q. In other words, you didn't pretend to know what was done at the plant while it was shut down the winter of 1947 and 1948?

Mr. Andersen: I object. The question is leading.

Mr. Banfield: I think, if the Court please—I would like to clear up the date he was talking about.

The Court: The objection is to the form of the question, which is leading.

Q. When were you first employed there?

A. In April, 1947.

Q. In April, 1947. Now, at the end of that year do you know what kind of work the Company was doing? A. Yes.

Q. What kind of work were they doing?

A. They remodelled the sawmill at certain places, at places the mill was rotten and they had to put some new stuff in and new material, and motors

(Testimony of William H. Flint.)

burned out—they put in new [468] motors and machinery of all types.

Q. What kind of work were you doing that winter, outside or inside? A. Inside.

Q. This was before the strike? A. Yes.

Q. Was it a continuous repair and rebuilding during the whole winter?

A. Yes, I would say it was.

Q. Now, during the next winter, what kind of work did they do?

A. I would say it amounted to about the same thing.

Q. Was it a case of tearing out from the winter before or was it different?

Mr. Andersen: What winter are you talking about now?

Q. The winter of 1948.

A. It was a case of tearing out a certain amount that had been put in and a case of putting in in places in the mill that got rotten from years ago, which had already been there. It was practically the same type of work as the winter before.

Q. Now Mr. Flint Mr. Andersen asked you a question and I asked the Reporter here to read the question specifically, to which you answered "Yes" yesterday. I will try to [469] frame this question as he did. He said, "Didn't you agree on July 3 in a written agreement marked as Plaintiff's Exhibit No. 7 that you would claim jurisdiction of all work performed by employees of the Juneau Spruce Cor-

(Testimony of William H. Flint.)

poration according to your contract, and also the loading of the Company-owned or leased barges with Company-owned gear?" Was that the statement? Do you remember that question?

A. Yes, I do.

Q. You did answer "Yes" to that question, did you not? A. I believe I did.

Q. Mr. Flint at this meeting of April 9 just before the picket line was established, you said that you presumed that they read the minutes, but you didn't hear them. Is that your testimony?

A. I presume that they were read; yes.

Q. Is it the custom to read Union's minutes at a public meeting? A. No, it is not.

Q. In view of the fact that it was a public meeting, would you make the same presumption?

Mr. Andersen: I object to that as something not in evidence, and second as leading and suggestive. Counsel is testifying rather than asking questions.

The Court: I think he has already testified as to the character of the meeting. [470]

Mr. Andersen: He said they were all eligible to join. Everybody who was there was eligible to join, the witness said.

The Court: He may be interrogated as to the character of the meeting and whether or not he knows minutes of it were made.

Q. You may answer.

A. I forgot the question.

Q. Would you presume the Union would, at a public meeting, have the minutes read?

(Testimony of William H. Flint.)

Mr. Andersen: I will object to the form of the question as calling for a conclusion of the witness.

The Court: Objection overruled.

A. I presume that if we had an officer who had taken the minutes who knew what he was doing, the minutes would not have been read. Due to the fact that we had officers who made records as he did and kept such a record as he did, I presume he would read them.

Q. You testified that the Juneau Spruce Corporation paid your expenses to Portland. How much did they pay you?

A. A couple hundred dollars.

Q. Do you know the exact amount?

A. I am almost sure that is what it was. It was \$200, I am quite positive.

Q. Was this money paid to you before you [471] left or after you came back? A. Before I left.

Q. Will you tell us how it was that the Juneau Spruce Corporation gave you this \$200 to go to Portland?

A. I received a phone call from one of the Company officers in Oregon, Mr. Card, and he asked me—he had heard rumors——

Mr. Andersen: I am going to object to that as hearsay.

The Court: Yes.

Q. Just state what he stated.

The Court: That is subject to objection. I think



(Testimony of William H. Flint.)

the conversation between them can be eliminated, can it not?

Mr. Banfield: I think probably it can, if the witness so phrases it to state what transpired.

The Court: He can answer why he went down.

Mr. Banfield: Yes.

Q. Why did you go down to Portland?

A. To see the International Officers of our Union and the lawyer of our International so that I could find out the operation of the Taft-Hartley labor law, which I couldn't find anyone in Juneau who did know how it operated.

Q. Now, Mr. Flint, were you asked to go down there by anyone?

A. I was asked to go down; that is right.

Q. By whom?

A. By the man who represented the Company.

Q. Who?

Mr. Andersen: He said by the man who represented the company.

A. Mr. Card.

The Court: You can be specific.

A. Mr. Card.

Q. Did anybody else ask you to go?

A. No one else asked me, no.

Q. Did you have any meeting with your Union officers about going?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial.

Mr. Banfield: If the Court please, I would like to show his authority for what he was doing.

(Testimony of William H. Flint.)

The Court: That he went down, you mean, as representative of the Union?

Q. Did you go as a representative of the Union?

A. I did.

Q. Did you have authority to go?

Mr. Andersen: I object to that as calling for a conclusion and opinion of the witness. I never heard of a Union sending anybody at his own expense.

Mr. Banfield: You will learn about it in due time.

Mr. Andersen: We always learn. [473]

A. I called officers of my Local and representatives of Local 16, the Longshoremen's Union, and told them I was going to Portland at the Company's expense and they raised no objection to my going.

Mr. Andersen: I move that the last answer be stricken as a conclusion and opinion of the witness.

The Court: Objection overruled.

Q. Now, Mr. Flint, you stated that the Company paid you \$200 at this time. Was there any further understanding about this \$200 between yourself and the Company?      A. Yes, there was.

Q. State what it was.

A. I told him that we had a very small amount of money in our Treasury at the time and I couldn't take the money, and if they wanted our Local to know what was right and what was wrong and have them contact someone who knew, they would have to pay the expenses down there, and they might get

(Testimony of William H. Flint.)

it back and they might not, depending on how successful our Union was in the next few years.

Q. Did you have \$200 in the Treasury at that time?      A. I don't think we did.

Q. How much did you spend on that trip?

A. I spent over that, I know.

Q. Who paid the balance?      A. I did.

Q. Has the Union ever had \$200 since then?

A. No.

Q. Where did the money come from for you to go down on the second trip?

A. The men in our Local came to the Hall and the Convention Ordinance was read to them that we should send a man to represent our Local to this convention, and they dug in their own pockets, by vote, of course, and chipped in the money for me to go to Portland.

Q. As the result of this trip to Portland is the Union indebted to the Juneau Spruce Corporation—

Mr. Andersen: I object to that as calling for the conclusion and opinion of the witness.

Q. For this amount of \$200?

The Court: Objection overruled.

A. As far as I am concerned we are not.

Q. Are not?

A. Unless at such a time in the future we had enough to see our way to pay it back without hurting our finances in the Local.

Q. In other words, there was no definite promise that you would pay it back?

(Testimony of William H. Flint.)

Mr. Andersen: I move that be stricken. It is the testimony of counsel.

The Court: He just repeated in effect what had already been testified to. The motion is denied.

Q. Was there any definite and binding agreement to pay it back? A. No.

Q. If not, what was it conditioned on? Was there any condition attached?

A. That they might——

The Court: He has already testified to the condition.

Mr. Andersen: Yes, it has already been asked and answered, your Honor.

Q. Now, you said, Mr. Flint, that Mr. Card called you. Had you contacted anybody in the Company previous to this about going to Portland? Where was the idea initiated? Who initiated it?

Mr. Andersen: I submit he has already testified Mr. Card telephoned from Portland.

Mr. Banfield: But he didn't say anything about the circumstances—at whose request or anything else. I want to know who initiated it.

The Court: He may state how this idea originated.

A. To the best of my knowledge——

Mr. Andersen: I move that be stricken as an opinion and conclusion of the witness.

The Court: Just state what you know.

A. I know that just before the phone call received by me, a [476] week or so before that time,

(Testimony of William H. Flint.)

there were many of our members wanted to go back to work and talked about it on the street.

Mr. Andersen: I move that be stricken as not responsive.

The Court: He is not answering the question.

Q. Do you remember a conversation with Mr. Stamm on this subject? Mr. Stamm, who worked in the office of the Company? A. Yes.

Q. What was that conversation?

The Court: I don't think it is necessary to state that. State whose idea it was that you go to Portland, yours or somebody else's or whose, if you know. A. It was my idea.

Q. When was that idea first conveyed to anybody in the Juneau Spruce Corporation?

A. I conveyed that in the phone conversation with Mr. Card.

Q. Did he call you or——

A. He called me.

Q. In pursuance to any request or on his own? Did you make the request in the first place?

A. He called me at the request of someone else.

Q. Who was the someone else?

A. One of the officers of the Juneau Spruce locally. [477]

Q. Who was he?

A. A Mr. Dick—I can't recall his name. Dick Stamm.

Q. Had you talked to him about going to Portland before you talked to Mr. Card? A. No.



(Testimony of William H. Flint.)

Q. Then the idea originated with Mr. Stamm, you think?      A. No.

Mr. Andersen: I move that be stricken.

Q. You say the idea originated with you to go to Portland. How did you get in touch with the Company and how did Mr. Card get in touch with you?      A. May I explain?

The Court: All you have to answer is whose idea it was, yours or Mr. Stamm, or Mr. Card—who first had the idea?

A. I did.

The Court: You had the idea to go to Portland before Mr. Card called you up?      A. I did.

Q. Did you convey that idea to the Company?

A. Yes, that is right.

Q. By what method?

A. Over the phone to Mr. Card.

Q. How did it happen that Mr. Card called you, if you know?

Mr. Andersen: I submit it is bordering on the ludicrous. I object to the form of the question. It is incompetent, [478] irrelevant and immaterial, and calling for a conclusion and opinion of the witness.

The Court: The only question is with whom the idea originated. He said it originated with him.

Mr. Andersen: After he talked with Mr. Card now, that is the last answer.

Q. Did the idea originate with you after or before you talked to Mr. Card?

Mr. Andersen: I submit, he has already answered that.

(Testimony of William H. Flint.)

The Court: It is in such a state as to warrant further examination.

A. It was while I was talking to Mr. Card.

Q. While you were talking to Mr. Card you got this idea to go to Portland?

A. Yes, that is right.

Q. What were you talking about that gave you the idea?

A. I was talking about our men going back to work or not. He asked me if our Local would go back through the picket line. I said, "No, not until we had a chance to confer with our lawyer and a lawyer who knew the Taft-Hartley law," and if he knew there would be a lawsuit against us or if it would help to go through the picket line, or make it worse, or what the situation was.

Q. Now, Mr. Andersen questioned you about a meeting of last November, about the fifteenth or eighteenth, in the office [479] of the Juneau Spruce Corporation. Was there any proposal at that meeting that anyone arbitrate this dispute?

A. Like I said before, arbitrate—a proposal that we sit down and negotiate it, more than arbitration.

Q. Did anyone propose at the meeting of the eighteenth that this entire matter be left or decided by someone or a group of persons and that that decision be final and binding on everyone?

A. No.

Q. Was any such proposal made by the I.L.W.U. or Mr. Albright at any time in November, 1948, that this be done?

(Testimony of William H. Flint.)

A. In the month of November?

Q. Yes. A. I would say "No."

Q. Now, was the I.W.A. willing to arbitrate this matter and to be bound by the decision of any arbitrator at any time after the picket line, after you walked through the picket line?

A. Yes; I have got to back-track that answer.

Q. You may qualify it.

The Court: Correct it?

A. Up to the time we went through the picket line, that we were willing to settle by arbitration or any means, but after we went through the picket line, we were ready to claim jurisdiction and fight for that jurisdiction. [480]

Q. When did you go through the picket line?

A. July 6.

Q. 1948? A. 1948.

Q. Now in the discussions between April 1, 1948, and the discussion—and going through the picket line in July of 1948, you stated that Mr. Albright did propose arbitration by an Alaskan arbitrator?

A. Yes.

Q. Was there anyone specifically mentioned by Mr. Albright as being this arbitrator?

A. Well, in a way he did, and in a way he didn't, make it a specific name.

Q. Who was to name this arbitrator, according to his proposal?

A. All our arbitration centered around the fact that the logical one to do it would be the Labor

(Testimony of William H. Flint.)

Department in Juneau, the Labor Department of Alaska.

Q. The one of which Mr. Henry Benson is Commissioner of Labor? A. That is right.

Q. You mean it centered about them naming the arbitrator, or Mr. Benson being the arbitrator?

Mr. Andersen: I object to that as complex and suggestive. [481]

The Court: Objection overruled.

Q. Go ahead.

A. Whenever we were talking about arbitration we always worked out of Benson's office. He would seem the logical one to be it, so I imagine that would be who the arbitrator would be.

Q. Was the question of arbitration ever put up to the I.W.A. membership?

A. You mean if we had a legal right?

Q. No; did you ever take a vote in the I.W.A. meetings, between April 1, 1948, and the time you went through the picket line, about three months later to determine whether or not your members would permit Mr. Benson or his Department to arbitrate this matter?

A. No, there was no vote of that type taken.

Q. It never got to the point where you were authorized to submit it?

Mr. Andersen: I object to that as calling for a conclusion and opinion of the witness, and it is leading and suggestive. Counsel's questions are leading.

(Testimony of William H. Flint.)

The Court: He has already answered to that effect. It seems to me that it is not necessary to ask the question.

Q. Were you ever authorized to submit the matter to arbitration?

Mr. Andersen: I object to that on the ground I just [482] stated a moment ago.

The Court: Objection overruled.

A. There was never any actual authorization taken where we would be allowed to submit it to arbitration; no.

Q. Now, you spoke of being present at a meeting with Mr. Benson, and you said the Company. Who did you mean by "the Company"?

A. With Mr. E. H. Card.

Q. And who else was present?

A. Myself, Mr. Card and Mr. Benson. I believe that is all.

Q. Did you ever attend such a meeting with Mr. Card in the office of Mr. Benson at which Mr. Evans was present, a Deputy Commissioner of Labor?

A. I don't think so.

Q. It was just Mr. Benson you think?

A. Mr. Benson.

Q. Mr. Flint, in November, 1948, you have mentioned several meetings with Mr. Albright and Local 16 members for the purpose of discussing this dispute. In these discussions were you able to arrive at a settlement?

A. No.

Q. And if not, what was the thing that prevented



(Testimony of William H. Flint.)

you from coming to an agreement; what was left in dispute?

Mr. Andersen: I object to that as calling for a conclusion. [483]

The Court: Hasn't that been gone over?

Mr. Banfield: No, your Honor, it hasn't been brought out as to the position. All we have had so far is during the period the I.W.A. refused to go through the picket line. They were willing to give up part of this work if the longshoremen proved their claims and respected their picket line until then, and after that, they were unwilling to give up the barge loading or any part of it. I would like to know if that is consistent with any offers made at this time in November, 1948, at the negotiations.

The Court: Very well, but make it brief.

A. The argument was over one man on the dock, who that man would be, would belong to.

Q. One man on the dock?

A. That is right.

Q. And what would he be doing?

A. He would be a man who hooked the lumber onto the gear, slingman.

Q. Slingman? A. One slingman.

Q. Did the longshoremen represent to you that they would do this work with one slingman?

Mr. Andersen: May it please the Court, I object. The question is answered. He said, "one man."

Mr. Banfield: We don't know which. [484]

(Testimony of William H. Flint.)

Q. Which one?

The Court: It would seem to me more accurate to ask if it was over some work rather than which man.

A. It was over who would have the man, or men, who would sling the lumber. I don't know that we discussed how many.

Q. The men?

Mr. Andersen: I move the last part be stricken as a conclusion and opinion of the witness. He said that they were arguing about one man. After counsel makes a speech, now he says "man or men." It is simply narrative, and I move it be stricken.

The Court: Is your objection to the answer or question?

Mr. Andersen: To the answer and question, for the purpose of objection.

The Court: The motion is denied.

Mr. Banfield: If there is any question there, I will withdraw it. I don't know whether there is or not.

Q. What did you offer; that is, the I.W.A., at this series of meetings?

A. Our offer was we would take all jurisdiction on the dock, give the I.L.W.U. all jurisdiction on the barges on the water. In other words, the face of the dock would be the dividing line between our jurisdictions. [485]

Q. The face of the dock would be the dividing line between your jurisdictions? A. Yes.

(Testimony of William H. Flint.)

Q. Who would be the crane operator?

A. Our man.

Q. And who would unhook the slings on the barges and store the lumber on the barges?

Mr. Andersen: I object to that as calling for a conclusion and opinion of the witness.

Mr. Banfield: No; it was an offer.

The Court: Objection overruled. If he knows he may state.

Q. If you know, go ahead.

A. The man who unhooked the lumber would be the men from the Local 16, I.L.W.U.

Q. Did the I.L.W.U. accept that proposal?

A. No.

Q. Did they give any reason for not accepting it?

A. Yes.

Q. What was the reason?

A. They said that they felt they should have a man on the dock also, or men—whatever it was—who would sling the lumber.

Q. Did they say how many men were involved?

A. As I said before, I don't think we got down to just how many it would be. [486]

Q. The summary was that the bullrail was the dividing line?

A. That is right.

Q. That was your proposal, that the bullrail would be the dividing line?

A. Yes.

Q. But they wanted a man on the dock; is that it?

Mr. Andersen: I object.

(Testimony of William H. Flint.)

The Court: It is repetitious. He has already testified to this.

A. Yes.

Mr. Banfield: First, I stated here the other day, may it please the Court, that we were unable to obtain certain telegrams. I believe we have them now.

Q. Do you have them now, Mr. Flint?

A. Yes, I have.

Mr. Banfield: As I represented to the Court, I think Mr. Kirkham testified that after Mr. Card arrived here October 23, 1947, they had a meeting, and a few days thereafter sent a telegram asking authorization from the Union to the International headquarters, and that a reply was received.

Q. Mr. Flint, who has charge of the records of the I.W.A. Local?

A. Right at the present, I have, in conjunction with the lady who we have who is acting as our bookkeeper. [487]

Q. Do you have the copy of a telegram sent sometime between October 23 and November 3 and a copy, that is to the International, and a copy received by Mr. O'Day from the International?

Mr. Andersen: What year?

Q. 1947.

A. I know we had that copy up until the National Labor Relations Board hearing or whether it was submitted for evidence in that, I do not know.

(Testimony of William H. Flint.)

Q. You mean the originals or copies?

A. The original might be in our files or might be in the N.L.R.B. file.

Q. Have you searched for it?

A. Not in the last, I would say, not in the last six months—three or four months.

Q. Have you any copies of those telegrams?

A. I am quite sure we have.

Q. Where did you get the copies?

A. Yesterday I asked our lady, our bookkeeper, to look these up.

Q. And what did she say?

A. She said this is what she found.

Q. In the files?           A. In the files.

Mr. Banfield: I will show it to counsel. [488]

Q. Mr. Flint, have you ever seen the originals of these telegrams?           A. Yes.

Q. Where did you see them?

A. I have seen them several times in our files.

Mr. Banfield: If the Court please, I will offer these.

Mr. Andersen: May it please the Court, I am not going to make the best evidence objection on counsel's representation.

Mr. Banfield: I am quite sure that we had them at the N.L.R.B. hearing.

The Court: They may be admitted.

Mr. Andersen: I object on the grounds that they are incompetent and immaterial and hearsay.



(Testimony of William H. Flint.)

The Court: I thought you were waiving objection.

Mr. Andersen: I waived only the best evidence objection, may it please the Court.

Mr. Banfield: I will show them to the Court.

The Court: Well, this has in substance already been testified to by Mr. Kirkham?

Mr. Banfield: In part.

Mr. Andersen: The state of the record shows they are entirely incompetent, immaterial and irrelevant. If a position was taken by those telegrams, it was changed by the [489] Local.

Mr. Banfield: What organization?

Mr. Andersen: I.W.A.

Mr. Banfield: If the Court please, this is testimony regarding the making of an agreement on November 3, 1947.

The Court: Objection overruled. They may be admitted.

Mr. Banfield: That is all Mr. Flint, unless you have cross-examination? That will be all Mr. Flint. I will read the telegrams to the jury.

A. Your Honor, will I be allowed to make a legal statement for arguing?

The Court: No, you have merely to answer the questions that are allowed to be asked you.

A. Am I excused?

The Court: The rule is that he should be on the stand while this is read to the jury.

Whereupon the telegrams were marked Plaintiff's

(Testimony of William H. Flint.)

Exhibit No. 8 and Plaintiff's Exhibit No. 9.

Mr. Banfield: This is a telegram dated October 30, 1947, to the International Woodworkers of America, Portland, Oregon. "The Juneau Local of the I.L.W.U. has asked the Union to recognize their dispute with the management of this sawmill and to go on record as to not disputing their jurisdictional line that they load all barges and scows and that they [490] handle all the movement of lumber from sheds to boats, scows, barges and from face of dock. The Company has stated that they will not comply with any of the above demands and that they will load all barges and scows with mill crews which would come under our jurisdiction. As far as we know at the moment this Company intends to load barges and scows here and tow them to Prince Rupert and ship from there by rail to the States. The longshoremen state that they do not want to cause a jurisdictional dispute with us and want us to recognize their demands by majority vote and to recognize their picket lines should they be established. They also state that they have been loading barges and scows for this sawmill for years. We are having a meeting this Saturday night, November 1, and would like to have your views by then as to whether we should recognize all or part of their dispute. Tim O'Day, Local M-271, Box 1951, Juneau, Alaska." That was Plaintiff's Exhibit 8. Plaintiff's Exhibit 9 is a telegram dated October 30, 1947, to Mr. T. O'Day, I.W.A., Local No. M-271, Post Office Box 1951, Juneau, Alaska. "Reurtel as

(Testimony of William H. Flint.)

to I.L.W.U. dispute. Without knowing details of your problem your decision should be made on past practice. If the people involved have been in I.W.A. bargaining unit they should stay there. If this is a new practice of the Company then the mill crew should put the lumber from the sheds to ship side and the longshoremen take it from there and load it with ship gear. The loading [491] of barges, scows, etc., with Company equipment is under our jurisdiction. This is the way it is handled on Pacific Coast. Although we have had minor disputes with longshoremen over this matter we have always won out. If any serious question comes up over jurisdiction it should be placed before C. I. O. Regional Director, Chris Hennings, Juneau, Alaska. If not settled there C. I. O. Jurisdictional Committee. Keep us informed on outcome. Send up-to-date contract with Company. If no extra copy we will make copy and return to you. Virgil Burtz, Acting Secretary-Treasurer, International Woodworkers of America, Portland, Oregon."

Mr. Andersen: There will be no further questions, your Honor.

Mr. Banfield: You may be excused.

(Witness excused.)